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INTERNATIONAL ECONOMIC LAW, GENDER EQUALITY, AND PATERNITY LEAVE: CAN THE WTO BE UTILIZED TO BALANCE THE DIVISION OF CARE LABOR WORLDWIDE?

Taylor Stoneman*

ABSTRACT

Which public policies most effectively promote gender equality and how can they be realized internationally to support women on a global scale? I first argue that longer periods of paid paternity leave must be embraced to challenge the historical conception of women as the primary caregiver in a male-female partnership and to bring men into the private sphere at the important confluence of a couple's childfree and parental lives. In order to broadly achieve these policies, I turn to international law. Building off Charlesworth, Chinkin, and Wright's observation of the international legal order's gendered nature, I demonstrate that the International Labour Organization's (ILO) core labor standards, as they are today, reflect a gendered understanding of the labor market and are insufficient to support the basic needs of a working population that includes both men and women. I further argue that a reimagined set of these standards should be incorporated into a World Trade Organization (WTO) Trade-Related Agreement on Labor Standards that would impose substantive obligations on Member States. Such an agreement would be consistent with the WTO's historical embrace of "embedded liberalism" and could ultimately drive domestic policy transformations benefiting women worldwide.

INTRODUCTION

Women and men have never been—and, despite substantial reforms over the past two centuries, still are not—equal.¹ Gender inequality has persisted over time through traditional social norms that affect the scope of economic

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¹ THE GLOBAL GENDER GAP INDEX, WORLD ECONOMIC FORUM 44 (2015) ("No country in the world has achieved gender equality.").

opportunities that are available to women. These gender norms do not represent innate truth; gender is socially constructed² and refers to “cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capabilities of men and women, based solely on their identity as men or women.”³ So “gender prescribes how we should be rather than recognizing how we are,” and caregiving roles are built on socialization rather than on ability.⁴ There is no biological reason preventing men and women from being equally responsible for activities encompassed by the reproductive economy. Regardless, these outdated social attitudes—even the most innocuous of which are harmful—are built, often imperceptibly, into the structure of today’s legal regimes and market economies, disadvantaging women on a broad scale.

Though modern, single women are more independent and empowered than ever before—“living full professional, economic, social, sexual, and parental lives on their own”⁵—statistics indicate that this independence is detrimentally affected by marriage and parenthood. Research shows that even in the most egalitarian households, the division of care labor is unequal, with women primarily responsible for taking care of children and performing housework.⁶ This gender norm goes to the heart of why women are presented with different economic opportunities, make less money, and face different challenges compared to men: women simply have less time. Women are entering the marketplace and building careers at almost the same rate as men, but they are still responsible for a disproportionate weight of the responsibilities at home. Guaranteeing adequate parental leave policies for all workers—most importantly, paternity leave for fathers—can challenge these traditional gender norms and equalize division of care labor within the household.

² See generally JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990).

³ U.N. ECON. & SOC. COUNCIL, Comm. On Econ., Soc. and Cultural Rights, Substantive Issues Arising in the Implementation of the Int’l Covenant on Econ., Soc. and Cultural Rights, U.N. DOC. E/C.12/2005/4 (2005).

⁴ Chimamanda Ngozi Adichie, *We Should All Be Feminists* (Dec. 30, 2013), available at https://www.ted.com/talks/chimamanda_ngozi_adichie_we_should_all_be_feminists/transcript.

⁵ Rebecca Traister, *The Single American Woman*, N.Y. MAG., Feb. 22, 2016, at 2.

⁶ I recognize this is a heteronormative perspective in a world where same-sex marriages and families (as well as single-parent families) are increasingly commonplace. While same-sex couples do face equivalent decisions regarding allocation of care labor within the household, their negotiations are not infused with the same expectations governed by traditional gender roles. In the interest of brevity, I have chosen to focus my analysis on male-female partnerships.

The inequalities of the family and the market on a domestic level are replicated within international law, and thus these problems must be addressed in an international forum. I argue that linking labor to trade in the World Trade Organization (WTO) through a negotiated agreement on universal labor standards would most effectively lead to the enforcement of gender-equal parental leave policies worldwide.

Part I describes the conceptualization of women's economic role that I base my thesis on. I focus on how the dichotomy between the family and the market and the divide between the productive economy and the reproductive economy shape women's expected roles of primary caregivers. Part II discusses the legal and economic structural inequalities that women face when trying to equalize economic opportunities and the policy solutions that exist to help ease their time constraints. Part III examines maternity, paternity, and parental leave provisions and the characteristics of these policies. Part IV shows how paid paternity leave can overcome traditional social attitudes and foster gender equality within the household. Part V focuses on international economic law and, in particular, on the WTO. I argue that, through a return to embedded liberalism and a reimagining of the International Labour Organization's (ILO) core labor standards, a WTO agreement on labor standards could provide an international instrument that would hold Member States accountable for implementing paternity leave policies. Part VI concludes this argument.

I. WOMEN: THE PRIMARY CAREGIVERS

A. *The Market and the Family*

1. *Historically*

The role of women as primary caregivers derives from a long history of distinct social dichotomies placing men in one sphere and women in another.⁷ The traditional image of male and female has been as correlatives,⁸ as wholly-different individuals with distinct roles to fill within society.⁹ Men governed

⁷ DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 9-16 (1989).

⁸ Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1578 (1983).

⁹ In the past, Justice Joseph P. Bradley of the U.S. Supreme Court espoused such a role for women:

The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. . . . The paramount destiny and

the public marketplace, where rationality, discipline, and objectivity were valued; politics and the law were discussed; and intellectual and cultural interests were pursued.¹⁰ The family and the home existed to balance this marketplace, with women in charge of preserving the nurturing, generous, and altruistic values prized there.¹¹ In this way, society specialized men in the productive and women in the affective.¹²

Although, rhetorically, the domestic sphere was heralded as equally important to the market, practically, the parallel domains did not sustain equivalent power. Women's subordination to men rests in a balance of dualisms associated with this market/family dichotomy—"reason/passion, rational/irrational, . . . power/sensitivity, thought/feeling, . . . objective/subjective"—where men, belonging in the public market, are associated with the "strong" side and women, belonging in the private family, are associated with the "weak" side.¹³ As Frances Olsen argues, the issue with these dualisms is not that women should disassociate with the "traditional" side; rather, it is the hierarchical quality placing "strong" men on one side of the spectrum and "weak" women on the other side that most limits each individual's ability to identify with all qualities and roles.¹⁴ This "structure of consciousness" builds a public/private divide that results in an incomplete vision of who men and women can be and what men and women can do, manipulating social relationships and passing the results down to each next

mission of woman are to fulfil[l] the noble and benign offices of wife and mother. This is the law of the Creator.

Bradwell v. State, 83 U.S. 130, 141 (1873) (Bradley, J., concurring).

¹⁰ Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 626 (1991); Olsen, *supra* note 8, at 1578.

¹¹ Olsen, *supra* note 8, at 1500.

¹² See *id.* at 1498; Tove Stang Dahl & Annika Snare, *The Coercion of Privacy: A Feminist Perspective*, in WOMEN, SEXUALITY AND SOCIAL CONTROL 8, 12–14 (Carol Smart & Barry Smart eds., 1978). The ideal worker (the man) organized his life to accommodate the demands of the employer; the ideal parent (the woman) in contrast accommodated the demands of the family. Sunny L. Munn & Tomika W. Greer, *Beyond the "Ideal" Worker: Including Men in Work-Family Discussions*, in GENDER AND THE WORK-FAMILY EXPERIENCE 21, 21 (Maura J. Mills ed., 2015).

¹³ Olsen, *supra* note 8, at 1575–76; see CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 51 (1987) ("[W]omen and men are equally different but not equally powerful."); JULIE A. NELSON, FEMINISM, OBJECTIVITY & ECONOMICS 22-23 (1996) (looking at these hierarchies in the context of neoclassic economics).

¹⁴ Olsen, *supra* note 8, at 1576–77.

generation—“we cannot choose between the two sides of the dualism, because we need both.”¹⁵

Reforms intending to make women equal participants in the market fall short because they replicate the inequality of the family. Intentional discrimination is now outlawed in most places, and the justifications used to support such discrimination have generally been discarded as inadequate.¹⁶ Inequality and sexual segregation are still prevalent, though, and these unequal results are often “explained as the effect that growing up and living in families has upon the behavior of men and women in the market.”¹⁷ Formal market equality does not necessarily lead to practical market equality.¹⁸ This type of sex-blind discrimination persists in two ways: “First, differing family obligations and expectations about men and women prejudice women. Second, the particular upbringings girls receive in families and the roles women have played in the past do in fact leave women ill-prepared to succeed in the market, as it is now organized.”¹⁹ The market was constructed by men and for men in a society where workers (men) were free of other responsibilities because caretakers (women) were the supporting characters, taking care of the home and the children. Though we have moved away from such an exacting reality, the roles available in the market still reflect characteristics from the sexist and discriminatory environment in which they were created.

An analogous, economics-based view of the market and the family can be seen upon an examination of production and reproduction and the definitions of work and labor employed almost universally by economic theory.²⁰ Economists consider work that generates a profit (i.e., paid work) as labor or production.²¹ Reproduction, in contrast, does not include payment for the “services” produced: usually activities such as child and elder care, food preparation and water retrieval, volunteer work, education, and health care.

¹⁵ See *id.* at 1498, 1577. See generally ANNE-MARIE MOONEY COTTER, GENDER INJUSTICE: AN INTERNATIONAL COMPARATIVE ANALYSIS OF EQUALITY IN EMPLOYMENT 15–19 (2004).

¹⁶ Such justifications included protecting the family and women from the corruption of the market as well as protecting men and the market itself from the ill effects said to result from women’s participation in the market. Olsen, *supra* note 8, at 1544–45.

¹⁷ *Id.* at 1547; see also MOONEY COTTER, *supra* note 15, at 274 (“de jure discrimination has given way to de facto discrimination”).

¹⁸ Dahl & Snare, *supra* note 12, at 14.

¹⁹ RHODE, *supra* note 7, at 165–67; Olsen, *supra* note 8, at 1547.

²⁰ KERRY RITTICH, RECHARACTERIZING RESTRUCTURING: LAW, DISTRIBUTION AND GENDER IN MARKET REFORM 182–200 (2002); MARILYN WARING, COUNTING FOR NOTHING: WHAT MEN VALUE AND WHAT WOMEN ARE WORTH 20–29 (1999).

²¹ WARING, *supra* note 20, at 22.

Thus, these services are not defined as labor.²² The line demarcating the boundary between the two spheres is malleable—“neither the productive nor the reproductive sphere describe fixed social space”—and thus, the spheres are difficult to define.²³ The two economies are intertwined and “interconstitutive”; the structure of each is a part of the function of the other.²⁴ There are no qualitative distinguishing factors for identifying where a specific activity may fall.²⁵ Determining the sphere of production is subject to normative and traditional values and is drawn differently depending on culture and context.²⁶

Even though the reproductive economy is not considered monetarily contributive to productivity and national wealth, it is essential to the productive economy.²⁷ Reproductive activities provide indispensable support to all market activity; in fact, the productive economy could not function without the reproductive economy’s accounting for life’s basic necessities.²⁸ Nevertheless, neoliberal reforms intending to create a more efficient and less regulated market (i.e., the productive economy) tend to cut social reproductive benefits such as subsidized child care or paid leave. For example, in the case of child care, it’s not that someone does not need to be doing these things (to operate at all, the productive economy must be supported by reproductive activities); it’s that neither the market (i.e., companies) nor the state support the reproductive economy, instead leaving this responsibility to the family. Then, rather than dividing reproductive responsibilities equally within a household, the bulk of

²² RITTICH, *supra* note 20, at 182; WARING, *supra* note 20, at 182–90.

²³ RITTICH, *supra* note 20, at 184.

²⁴ Productive work is structured and constrained by non-productive work; human beings need time to eat, sleep, recover from illness, and tend to familial obligations, all of which take time away from productive activities. RITTICH, *supra* note 20, at 187.

²⁵ Rittich notes that the existence of a market transaction can be an identifying factor pushing reproductive work into the productive economy. *Id.* at 185–86 (“It is not the essential character of the activity that determines its classification; rather, it is the conditions which structure performance and the existence or absence of direct compensation for the labor involved.”). For example, child care performed for free by a parent or a relative would be considered reproductive work, while paying a daycare center for child care would create a market transaction qualifying as productive work. *Id.*

²⁶ *Id.* at 186.

²⁷ *Id.* at 182–83.

²⁸ *Id.*; see also Joanne Conaghan, *Work, Family, and the Discipline of Labour Law*, in *LABOUR LAW, WORK, AND FAMILY: CRITICAL AND COMPARATIVE PERSPECTIVES* 19, 31–32 (Joanne Conaghan & Kerry Rittich eds., 2005) (noting that the “repositioning of [unpaid caring work] as a legitimate ‘cost’ of doing business enhances the argument for workplace accommodation of certain social benefits”).

domestic and reproductive tasks falls to women.²⁹ Relegated to private life, these responsibilities are devalued and discriminated against, invisible to the labor market.³⁰

2. *Persistent Dichotomies*

In many places around the world, women no longer are expected to remain exclusively in the home. For example, where they used to be regarded as too fragile for certain workplaces³¹ or as destined for innately separate functions in society,³² progressive laws in the United States have worked to bring women onto an equal plane with men.³³ The at-home maternal ideal, however, still permeates societal norms around the globe. A woman's identity³⁴ is still understood in the context of the home and the family: a "good wife and mother" takes care of her husband and her children. Social attitudes and roles have been slow to change, and the assumption that the "natural state of adult womanhood involve[s] being legally bound to a man" lingers.³⁵ Antiquated societal preferences—perceiving female fulfillment as deriving from roles as wives, mothers, and caretakers instead of from roles as economic agents—affect women's decisions of whether and how to allocate their time to market work. Today, Organisation for Economic Co-operation and Development (OECD) research shows that women are still the primary caregivers in the

²⁹ See Christine Chinkin, *Gender and Economic, Social, and Cultural Rights*, in *ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW: CONTEMPORARY ISSUES AND CHALLENGES* 134, 147 (Eibe Riedel et al. eds., 2014).

³⁰ ANNE-MARIE SLAUGHTER, *UNFINISHED BUSINESS* 81–87 (2015); Dahl & Snare, *supra* note 12, at 12–14.

³¹ *Bradwell v. State*, 83 U.S. 130, 141 (1873) (Bradley, J., concurring) ("The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."); see also RHODE, *supra* note 7, at 22.

³² In rejecting the argument that one of the privileges and immunities of women as citizens is to engage in any and every profession, occupation, or employment in civil life, Justice Bradley writes that "the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman." *Bradwell*, 83 U.S. at 141.

³³ See generally GILIAN THOMAS, *BECAUSE OF SEX: ONE LAW, TEN CASES, AND FIFTY YEARS THAT CHANGED AMERICAN WOMEN'S LIVES AT WORK* (2016).

³⁴ See generally BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1997).

³⁵ REBECCA TRAISTER, *ALL THE SINGLE LADIES: UNMARRIED WOMEN AND THE RISE OF AN INDEPENDENT NATION* 14 (2016). Traditional societal values can be especially sticky when leaders of countries regard women in this way. In a speech marking International Women's Day, President Erdoğan of Turkey espoused his conviction that "a woman is above all a mother" and that "you cannot free women by destroying the notion of family." See *Recep Tayyip Erdoğan: 'A Woman Is Above All Else A Mother'*, *GUARDIAN* (March 6, 2016), <http://www.theguardian.com/world/2016/mar/08/recep-tayyip-erdogan-a-woman-is-above-all-else-a-mother-turkish-president>. To him, it seems, a fully independent and equal woman and a thriving, successful family unit are mutually exclusive concepts. See *id.*

home,³⁶ which limits their ability to achieve economic and professional equality.

The interconnected relationship between marriage, family, and the market exists as a socioeconomic reality that affects women's ability to achieve equality in the workplace. Placing women in the domestic sphere years ago disadvantages women today because such household responsibilities are still thought of as primarily—if not solely, in some cultures—a woman's responsibility.³⁷ The primary caregiver role is not inherently objectionable—many women choose it volitionally. But this traditional view of women as the soft, emotional mother, the primary caregiver, and the only chore-doer creates a gender stereotype that leaves those women who choose to seek economic opportunities outside of motherhood with little time to accomplish what their male counterparts can more easily do because they are not burdened by the same gender stereotype.

*B. Marriage and "the Motherhood Penalty"*³⁸

Today young, millennial women are better able to find success outside of the home than their predecessors. Women worldwide are more likely than men to participate in tertiary education.³⁹ Young women are driving this steady transformation in the United States: in 2014, 30.2% of women had a bachelor's degree, while only 29.9% of men did.⁴⁰ In the same year, sixty-nine percent of women in the twenty-five- to thirty-four-year-old age group were employed in the American labor force.⁴¹ In 2012, the same age group in the United States saw a gender wage gap of only ninety-three percent compared to the overall

³⁶ Chinkin, *supra* note 29, at 153; Maria del Carmen Huerta et al., *Father's Leave, Father's Involvement, and Child Development: Are They Related? Evidence from Four OECD Countries* 8 (OECD Soc., Employment and Migration Working Paper No. 14, 2013) [hereinafter *Father's Leave*].

³⁷ Jeanette N. Cleveland, Gwenith G. Fisher & Katina B. Sawyer, *Work-Life Equality: The Importance of a Level Playing Field at Home*, in *GENDER AND THE WORK-FAMILY EXPERIENCE: AN INTERSECTION OF TWO DOMAINS* 177, 180–81 (Maura J. Mills ed., 2015).

³⁸ Stephen Benard & Shelley J. Correll, *Normative Discrimination and the Motherhood Penalty*, 24 *GENDER & SOC.* 616, 616 (2010).

³⁹ WORLD DEVELOPMENT REPORT 2012 *GENDER EQUALITY AND DEVELOPMENT*, WORLD BANK (2012), <https://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936222006/Complete-Report.pdf> [hereinafter *WORLD DEVELOPMENT REPORT*].

⁴⁰ Nolan Feeney, *Women Are Now More Likely to Have College Degree Than Men*, *TIME* (Oct. 7, 2015), <http://time.com/4064665/women-college-degree/>. In 2005, twenty-six percent of women had a bachelor's degree, while 28.5% of men did. *Id.*

⁴¹ BLS REPORTS, U.S. BUREAU LAB. STAT., *WOMEN IN THE LABOR FORCE: A DATABOOK* 9 (2015).

gender wage gap of eighty-four percent.⁴² Childless, unmarried women earn ninety-six cents for every dollar earned by men, compared to seventy-six cents earned by married mothers.⁴³ Staying single for longer has become fairly normal; marriage is no longer necessarily the end goal, the journey all women *must* travel to become fulfilled.⁴⁴

I mention this modern single woman to hold her out as a normative ambition for all women, “a complete rethinking of who women are and who men are and, therefore, also of what family is and who holds dominion within it . . . and outside it.”⁴⁵ Women are relying on their own intellect, their own resources, and their own economic power to live their lives independent from and equal to men. Marriage used to be the sole route to economic security; now, women are finding it independently.⁴⁶

Marriage, however, acts as a restraint on women’s autonomy and limits women in a way that it does not limit men.⁴⁷ It correlates with decreased wages for women, while married men receive a “marriage premium” bump in wages compared to unmarried men.⁴⁸ It substantially increases domestic responsibilities for women but not for men.⁴⁹ Delaying marriage is linked to making more money for women: college graduates who wait to get married until after age thirty make, on average, over \$18,000 more per year than women who marry before age twenty.⁵⁰

Becoming a mother severely affects women’s economic opportunities to an even greater degree. The benefits of a single, childfree economic life—or even a married, childfree one—diminish as soon as a woman gives birth. Motherhood affects women’s work patterns, as bearing and raising children make it more likely for women to have periods of work interruption than if they were childless: “In the United Kingdom, single women without children

⁴² ON PAY GAP, MILLENNIAL WOMEN NEAR PARITY—FOR NOW, PEW RESEARCH CENTER (2013) [hereinafter ON PAY GAP].

⁴³ Claire Cain Miller, *The Motherhood Penalty vs. the Fatherhood Bonus*, N.Y. TIMES (Sept. 6, 2014), http://www.nytimes.com/2014/09/07/upshot/a-child-helps-your-career-if-youre-a-man.html?_r=0.

⁴⁴ See generally TRAISTER, *supra* note 35.

⁴⁵ *Id.* at 30.

⁴⁶ *Id.* at 37–69.

⁴⁷ MOONEY COTTER, *supra* note 15, at 25, 28.

⁴⁸ Shelley J. Correll, Stephen Benard & In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC. 1297, 1307, 1316 (2007).

⁴⁹ WORLD DEVELOPMENT REPORT, *supra* note 39, at 218.

⁵⁰ KAY HYMOWITZ ET AL., KNOT YET: THE BENEFITS AND COSTS OF DELAYED MARRIAGE IN AMERICA 6 (2013).

are six percent more likely than single men without children to hold a part-time job, but the likelihood rises to twenty-four percent for those married without children and to fifty percent for those married with small children.”⁵¹ Long maternity leaves and part-time work diminish women’s connection to the work force. Mothers’ wages have grown more slowly over time than those of women without children.⁵² Job applicants who are mothers are called back for interviews half as often as applicants who are not mothers.⁵³

Women can be pushed into caregiving roles by the belief that a working mother cannot establish a relationship as warm and secure with her children as a mother who does not work.⁵⁴ Social guilt trips such as this coerce women into the home, causing significant and negative effects on the time women ultimately choose to allocate to paid work. On top of the historical and traditional views of women as mother and wife, the new trend of “intensive motherhood”⁵⁵ is “just as restrictive, if not more so, than sexism in the home or in the workplace.”⁵⁶ This paragon of motherhood advertises an ideal notion of child-rearing, a standard that is both unrealistic and impossible for working mothers to attain.⁵⁷ Redefining women through their relationships with their children pressures mothers to increase the chores involved in mothering, further constraining their time.⁵⁸

Parenthood does not constrain men in the same way it constrains women: “mothers with very young children are less likely to be in paid work than those whose youngest child is in compulsory schooling. Fathers’ employment participation, by contrast, does not seem to be affected by the presence of children.”⁵⁹ While men with children are perceived as more responsible and

⁵¹ WORLD DEVELOPMENT REPORT, *supra* note 39, at 224.

⁵² Benard & Correll, *supra* note 38, at 617.

⁵³ Correll, Benard & Paik, *supra* note 48, at 1333.

⁵⁴ WORLD DEVELOPMENT REPORT, *supra* note 39, at 224.

⁵⁵ “Intensive motherhood” is also known as “over-parenting,” though more often than not the mother is shouldering more of the responsibility.

⁵⁶ CARYL RIVERS & ROSALIND C. BARNETT, THE NEW SOFT WAR ON WOMEN: HOW THE MYTH OF FEMALE ASCENDANCE IS HURTING WOMEN, MEN—AND OUR ECONOMY 193 (2015) (citing ELIZABETH BADINTER, THE CONFLICT: HOW MODERN MOTHERHOOD UNDERMINES THE STATUS OF WOMEN (2010)); Joan C. Williams, Keynote Address: Want Gender Equality? Die Childless at Thirty, *in* 27 WOMEN’S RTS. L. REP. 3, 4–6 (2006).

⁵⁷ RIVERS & BARNETT, *supra* note 56, at 189–99.

⁵⁸ *See id.* at 194–95.

⁵⁹ *Father’s Leave*, *supra* note 36, at 11; *see* Correll, Benard & Paik, *supra* note 48, at 1307; *but see* JANET SILTANEN, LOCATING GENDER: OCCUPATIONAL SEGREGATION, WAGES AND DOMESTIC RESPONSIBILITIES 148–63 (1994).

committed to their jobs, women with children are regarded as distracted, overwhelmed, and less competent.⁶⁰ Highly successful mothers are perceived as less likable and warm than similarly successful fathers and are held to stricter standards for promotion, hire, and salary.⁶¹ Out of all working parents with children under eighteen, fifty-one percent of working mothers say that being a working parent has made it harder for them to advance in their job or career, compared to only sixteen percent of working fathers feeling that way.⁶² Even though “[w]ork . . . is just as crucial and as defining a pillar of adult life for women as it is for men,”⁶³ becoming a parent disrupts a woman’s life much more drastically than it disrupts a man’s.

Couples’ transitions to parenthood consistently involve the adoption of a gendered division of paid and unpaid labor.⁶⁴ Time spent by both men and women on child care has increased in the past few decades, but mothers still spend more time on all household activities each day than fathers do.⁶⁵ “Responsibility for children is consistently understood as one of the most fundamental elements of good mothering and continues to be a form of labor, often invisible, that adds to women’s share of labor in significant ways.”⁶⁶ It’s not that fathers do not have the same capacity for parenting as mothers have nor is it biologically inevitable that mothers parent in a more effective manner; rather, social structures and societal norms and expectations place fathers in the role of back-seat parent.⁶⁷

Women who obtain positions of power and strategic importance are often unmarried and childfree. Thus, they are considered somehow more qualified because not only do they not need to divide their academic and professional attentions, “but also because, without families, it could be assumed that their

⁶⁰ Correll, Benard & Paik, *supra* note 48, at 1316–19.

⁶¹ Benard & Correll, *supra* note 38, at 639.

⁶² ON PAY GAP, *supra* note 42, at 3.

⁶³ TRAISTER, *supra* note 35, at 157.

⁶⁴ Erin M. Rehel, *When Dad Stays Home Too: Paternity Leave, Gender, and Parenting*, 28 GENDER & SOC. 110, 112 (2014). There are three theoretical approaches that shape the research on this gendered division of labor: relative resources, time availability, and gender ideology. *See id.*

⁶⁵ The Bureau of Labor Statistics’ American Time Use Survey from 2009–2013 show that for families with children under eighteen years old, mothers who were employed full-time spent 1.89 hours per day on household activities, whereas fathers who were employed full-time spent 1.18 hours per day on household activities. *American Time Use Survey*, BUREAU LAB. STAT. (2013).

⁶⁶ Rehel, *supra* note 64, at 113.

⁶⁷ *Id.* at 113–14.

lives were otherwise empty.”⁶⁸ However, men almost always have held immensely influential roles with wives and many children.⁶⁹ In addition to the actual burdens placed on mothers that impact their chances for advancement, these assumptions that family must come first for mothers also debilitates them.

It’s not that mothers do not want high-profile, challenging work; rather, many women “find themselves in relationships in which their careers are subordinate to their partners’.”⁷⁰ A 2014 study of Harvard Business School (HBS) graduates found divergent expectations regarding career priority among Baby Boomer and Generation X men and women.⁷¹ Although HBS graduates’ early definitions of success referenced career-related factors such as job titles, job levels, and professional achievements at about the same rates,⁷² “only 7% of Gen X and 3% of Baby Boom women . . . expected that the women’s career would take priority over the man’s.”⁷³ Contrast this with approximately sixty percent of men who expected that their careers would take priority over their spouses’ or partners’.⁷⁴ Similarly, more than three quarters of men expected that their partners would do most of the child care, while about half of the women expected the same arrangement.⁷⁵

C. Which Women?

Wealthy, middle-income, working-class, and poor women experience motherhood, marriage (or the absence of), and the workplace differently. Moving down the pay scale, workers are more likely to have caretaking

⁶⁸ TRAISTER, *supra* note 35, at 157-59. Some examples of unmarried, childfree women who are widely regarded as ambitious or powerful include Oprah Winfrey, Supreme Court Justices Sonia Sotomayor and Elena Kagan, Senator Barbara Mikulski, former Secretary of State Condoleezza Rice, and former Secretary of Homeland Security Janet Napolitano. This is not to say that *all* influential and well-known women are single; Senators Kirsten Gillibrand and Amy Klobuchar, and Attorney General Loretta Lynch all began their career trajectories and then married or started families. *Id.*

⁶⁹ *Id.* at 157.

⁷⁰ Robin J. Ely, Pamela Stone, & Colleen Ammerman, *Rethink What You “Know” About High-Achieving Women*, HARV. BUS. REV., Dec. 2014, available at <https://hbr.org/2014/12/rethink-what-you-know-about-high-achieving-women>.

⁷¹ *Id.*

⁷² *Id.* at 3.

⁷³ *Id.* at 11.

⁷⁴ *Id.* at 10.

⁷⁵ *Id.* at 12-13. In reality, more than two-thirds of HBS women graduates actually did take primary responsibility for raising children. *Id.* at 11. Additionally, “28% of Gen X and 44% of Baby Boom women had at some point taken a break of more than six months to care for children, compared with only 2% of men across those two generations.” *Id.* at 8.

responsibilities.⁷⁶ The HBS study cited above—conducted among high-achieving and ambitious graduates of one of the best business schools in the world—is far from demonstrative of the entire spectrum of division of responsibility and career ambition within partnerships. Even within the study, the percentages were slightly different for men and women of color than for white men and women in almost every category.⁷⁷ These differing statistics persist across all points of measurement. For example, in the United States, although all women continue to earn less than white men, African-American, Hispanic, and Latina women experience a gender pay gap much larger than the widely-advertised gap of eighty-four cents to the dollar.⁷⁸ Traditional feminism has often failed to take these differences into account, presenting a unified front of female experience when that is far from the truth.

Distinctions between race, culture, nationality, income, and education create different challenges for each woman. The malleable boundary between the productive economy and reproductive economy is often defined by individual cultural norms, and no two cultures or nationalities treat the relationship between man and woman or market and family identically. It is often the color of a woman's skin or the amount of money she is able to bring home each day that determines which variation of gender-delineated responsibilities she faces. Understanding how women's overlapping identities (including race, class, ethnicity, religion, and sexual orientation) impact the way they experience inequality, oppression, and discrimination—i.e., intersectional feminism—provides much-needed context in analyzing how women experience their roles as primary caregivers and what solutions would best help each circumstance.

These diverse perspectives beg the question: Does the analysis shift upon looking through a different lens? Most certainly yes. An intersectional perspective is crucial when addressing the myriad of barriers women face in every circumstance, especially in the development of national policies that are responsive to gender inequality at the individual state level.

⁷⁶ Williams, *supra* note 56, at 7. Moving down the pay scale, women are generally more likely to experience gender inequality. See THE GLOBAL GENDER GAP INDEX, *supra* note 1, at 18.

⁷⁷ See Ely, Stone & Ammerman, *supra* note 70, at 11 (“Forty-eight percent of [men of color]—compared with 39% of white men—anticipated that their spouses’ careers would be of equal importance.”).

⁷⁸ Katie Benson, *How Does Race Affect the Gender Wage Gap?*, AM. ASS’N U. WOMEN (Apr. 3, 2014), <http://www.aauw.org/2014/04/03/race-and-the-gender-wage-gap/> (last updated Oct. 25, 2016); see also KEVIN MILLER, THE SIMPLE TRUTH ABOUT THE GENDER PAY GAP, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (2017), <http://www.aauw.org/resource/the-simple-truth-about-the-gender-pay-gap/>.

The structural inequality faced by women is a global problem presenting global challenges with infinite possible solutions—to dive into the many permutations of solutions would require a paper much longer than this one, and my ultimate proposal does not require it at this time. Though the policy analysis may shift based on different social factors, my research reveals a truth that is as close to a universal proposition that I can make: women around the world are disproportionately responsible for childcare and domestic work in the household, regardless of class, race, culture, nationality, or any other identifiable factor. It is this truth that the following analysis seeks to transform.

II. EQUALIZING ECONOMIC OPPORTUNITIES

A. *Structural Inequalities within the Law*

The male-female relationship is shaped in part by the cultural, historical, and anthropological dynamics discussed above, but it is also influenced by law.⁷⁹ Formal legal equality is vulnerable to the imbalances of power that still exist within the home:

The formal acquisition of a right, such as the right to equal treatment, is often assumed to have solved an imbalance of power. In practice, however, the promise of rights is thwarted by the inequalities of power: the economic and social dependence of women on men may discourage the invocation of legal rights that are premised on an adversarial relationship between the rights holder and the infringer.⁸⁰

⁷⁹ Susan B. Anthony predicted as much in a speech she gave in 1877:

... Even when man's intellectual convictions shall be sincerely and fully on the side of Freedom and equality to woman, *the force of long existing customs and laws* will impel him to exert authority over her, which will be distasteful to the self-sustained, self-respectful woman. The habit of the ages cannot, at once, be changed. Not even amended constitutions and laws can revolutionize the practical relations of men and women, immediately, any more than did the Constitutional freedom and franchise of Black men, transform white men into practical recognition of the civil and political rights of those who were but yesterday their legal slaves. Constitutional equality only gives to all the aid and protection of the law, while they educate and develop themselves, while they grow into the full stature of freemen. It simply allows equality of *chances to establish equality*.

Susan B. Anthony, *The Homes of Single Women* (1877) (emphasis added).

⁸⁰ Charlesworth, Chinkin & Wright, *supra* note 10, at 635; *see also* CAROL SMART, *FEMINISM AND THE POWER OF LAW* 145 (1989).

Law and legal reasoning is gendered, built from a male perspective and shaped by the public/private domain dichotomy.⁸¹ The absence, presence, and characteristics of the legal rules affecting certain social goods shape family behavior and, in turn, alter the market as well.

Traditionally, the family was thought of as a private domain that should be free from intervention by the state.⁸² The issue with this view, both then and now, is that, practically, the state is incapable of taking a neutral stance: the state still maintains a conception of proper family roles, and thus any “nonaction” or “nonintervention” simply ratifies preexisting social roles within the family.⁸³ The regulation of taxation, social security, education, health, and welfare permeates the “private” sphere and affects family structures and the male-female relationship.⁸⁴ Fundamentally, “legal rules establish ‘jural relations,’ and . . . the absence of a right (a ‘no-right’) distributes bargaining power just as decisively as the presence of one.”⁸⁵ In this way, nonintervention preserves the power structure within the family and empowers men while subjugating women: “by insisting that the family should not be subject to state regulation, men have been able to retain their excessive power.”⁸⁶ The family is, in fact, ubiquitously regulated, directly and indirectly.⁸⁷

In addition to this dynamic, in which seemingly neutral or non-interventionist legal rules perpetuate inequality, inequality is facially present in both U.S. and foreign laws. Gender-based legal differences are embedded into

⁸¹ Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 886-87 (1989).

⁸² KATHERINE O'DONOVAN, SEXUAL DIVISIONS IN LAW 2–20 (1985); Charlesworth, Chinkin & Wright, *supra* note 10, at 627; Olsen, *supra* note 8, at 1504.

⁸³ Olsen, *supra* note 8, at 1504–06; MACKINNON, *supra* note 13, at 101 (“[T]he legal concept of privacy . . . has preserved the central institutions whereby women are *deprived* of identity, autonomy, control and self-definition; and has protected the primary activity through which male supremacy is expressed and enforced.”); Olsen, *supra* note 8, at 1504–06.

⁸⁴ Charlesworth, Chinkin & Wright, *supra* note 10, at 627.

⁸⁵ Janet Halley and Kerry Rittich, *Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism*, 58 AM. J. COMP. L. 763, 763 (2010) (citing Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Legal Reasoning*, 23 YALE L.J. 28, 32 (1913)).

⁸⁶ Olsen, *supra* note 8, at 1510; *see also* Charlesworth, Chinkin & Wright, *supra* note 10, at 636.

⁸⁷ Broaching the full subject of legal regulation of the family structure and the gendered nature of law would encompass its own note. *See generally* MOONEY COTTER, *supra* note 15, at 19–23; O'DONOVAN, *supra* note 82; RHODE, *supra* note 7, at 125–31; Haleh Afshar, *Women and the State: Some Considerations of Ideological and Economic Frameworks in Engendering Policies*, in *THE STRATEGIC SILENCE: GENDER AND ECONOMIC POLICY* 152, 152–57 (Isabella Bakker ed., 1994); Finley, *supra* note 81; Halley & Rittich, *supra* note 85, at 753; Olsen, *supra* note 8.

the legal structures of economies around the world.⁸⁸ In 155 countries of the 173 countries studied by the World Bank for their report *Women, Business and the Law 2016: Getting to Equal*, women seeking employment and entrepreneurship opportunities face at least one obstacle that does not exist for men.⁸⁹ Gender inequality is a reality structured by law (and the absence of law)—most particularly by labor market policies, social protection schemes, and family law (e.g., the law in judgments on maintenance, custody, and matrimonial property).⁹⁰ In this way, gender equality requires more than the challenging of traditional gender norms; it also requires a shifting of legal policies in recognition of modern truths about the family and the market.⁹¹

B. Structural Inequalities Within the Market

This legal coercion runs parallel to market features impacting women in similar ways.⁹² Structural traits of the market create a negative feedback loop that reinforces women's role as the primary caregiver.⁹³ The World Development Report on Gender Equality and Development notes that “the extent to which women are able and willing to reassign time to market

⁸⁸ See generally WORLD BANK, WOMEN, BUSINESS AND THE LAW 2016: GETTING TO EQUAL 2 (2015).

⁸⁹ *Id.* at 3.

⁹⁰ WARING, *supra* note 20, at 163; Kerry Rittich, *Families on the Edge: Governing Home and Work in a Globalized Economy*, 88 N.C. L. REV. 1528, 1542–43 (2010).

⁹¹ Note that it is vital that both the legal and social concerns are addressed; equalizing laws and equalizing traditional attitudes work hand-in-hand. Implementing laws and policies that enable women to enter the workforce could be ineffective if women are still expected to be the primary caregivers for their children. Weak enforcement and design, as well as low capacity, could also present issues in countries where equalizing laws are on the books but women are not able to utilize them in practice. See WOMEN, BUSINESS AND THE LAW 2016: GETTING TO EQUAL, *supra* note 88, at 29–30.

⁹² See Dahl & Snare, *supra* note 12, at 8–26 (providing an application of how the coercive impact of the public/private divide results in a limited number of women committing crimes in Norway).

⁹³ REBECCA RAY, JANET C. GORNICK & JOHN SCHMITT, PARENTAL LEAVE POLICIES IN 21 COUNTRIES: ASSESSING GENEROSITY AND GENDER EQUALITY 3–4 (2009); WARING, *supra* note 20, at 162. See generally RITTICH, *supra* note 20, at 173–234. In fact, the entire accounting system for national financial positions and trends in national development skew what activities constitute production and thus what activities are valued. Marilyn Waring's discussion of the United Nations System of National Accounts (“UNSNA”) explains how the system “makes women invisible.” See WARING, *supra* note 20, at 37–74; see also Radhika Coomaraswamy (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Preliminary Report on Violence Against Women, Its Causes and Consequences*, ¶ 55, U.N. DOC. E/CN.4/1995/42 (Nov. 22, 1994) (“Economic systems which value profits often do so at the expense of female labour.”). GDP is also an antiquated statistic, skewing measures of “prosperity” in many ways, but notably for our purposes by not capturing unpaid work in the home. *How to Measure Prosperity*, THE ECONOMIST (Apr. 30, 2016), <https://www.economist.com/news/leaders/21697834-gdp-bad-gauge-material-well-being-time-fresh-approach-how-measure-prosperity>; *The Trouble with GDP*, THE ECONOMIST (Apr. 30, 2016), <https://www.economist.com/news/briefing/21697845-gross-domestic-product-gdp-increasingly-poor-measure-prosperity-it-not-even>.

activities is a function of existing institutional constraints, such as the availability of flexible (formal) working arrangements, social norms regarding women's role as economic agents, and individual preferences."⁹⁴ Market work consisting of fixed schedules and minimum hour requirements are often off-limits to women, as they have a second shift⁹⁵ of care labor waiting for them at home.⁹⁶ Women value jobs that enable them to adjust working hours and to exit and enter the labor market more frequently than men and at a lower cost.⁹⁷ The luxury of such flexibility, however, is often associated with the potential costs of funneling women into lower-quality jobs that pay less and weaken their labor market attachment.⁹⁸ In addition, traditional roles of women as caregivers, as well as the typically lower earnings of mothers in relation to fathers, "create strong incentives for women to reduce their employment and take on a large majority of child care responsibilities" upon becoming a parent.⁹⁹ Women are thus more likely to have career interruptions in order to care for young children, which result in "less actual experience among women and ultimately lead to lower wages and wage growth, *even after these women return to work.*"¹⁰⁰

The dualisms associating women with the "weak" side of the male-female dichotomy impact women looking to walk in lockstep with their male counterparts at work. Modes of achievement are frequently defined by traditional characterizations of success, a mold that makes it difficult for women playing by the same rules as men to succeed in the same ways as men.¹⁰¹ Furthermore, second-generation gender bias in the workplace creates

⁹⁴ WORLD DEVELOPMENT REPORT, *supra* note 39, at 222.

⁹⁵ ARLIE HOCHSCHILD, THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME 20-21 (1989).

⁹⁶ RHODE, *supra* note 7, at 172-75.

⁹⁷ WORLD DEVELOPMENT REPORT, *supra* at note 39, at 205; Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Maternity, Paternity and Parental: Data Related to Duration and Compensation Rates in the European Union, EUROPEAN PARLIAMENT PE 509.999, at 25-26 (2015) [hereinafter EUROPEAN PARLIAMENT STUDY].

⁹⁸ EUROPEAN PARLIAMENT STUDY, *supra* note 97, at 25; WORLD DEVELOPMENT REPORT, *supra* note 39, at 219; RAY, GORNICK & SCHMITT, *supra* note 93, at 4; *see also* Chinkin, *supra* note 29, at 147.

⁹⁹ RAY, GORNICK & SCHMITT, *supra* note 93, at 1, 9.

¹⁰⁰ WORLD DEVELOPMENT REPORT, *supra* note 39, at 220 (emphasis added).

¹⁰¹ The maleness standard of success inhibits the equalizing of economic opportunities for women because it suggests that "equality can only be achieved when a woman becomes like a man." BARNALI CHOUDHURY, PUBLIC SERVICES AND INTERNATIONAL TRADE LIBERALIZATION: HUMAN RIGHTS AND GENDER IMPLICATIONS 36 (2012); *see* MACKINNON, *supra* note 13, at 43; Herminia Ibarra, Robin J. Ely & Deborah M. Kolb, *Women Rising: The Unseen Barriers*, HARV. BUS. REV., Sept. 2013, <https://hbr.org/2013/09/women-rising-the-unseen-barriers>.

formidable obstacles to women's ability to rise in leadership roles within organizational structures that favor typically masculine expressions of authority and decisiveness.¹⁰² Historical views of what work was appropriate for women have created a sexual division of labor, termed "occupational gender segregation," with most female-majority job sectors involving care work in some form, such as nursing or education, and reflecting lower status and pay scales.¹⁰³ Women have clustered in these certain professions not only because of the traditional "appropriateness of certain tasks for the female sex," but also because of issues relating to hours and pay.¹⁰⁴ Where occupational segregation pushes women into different jobs than men, guarantees of "equal pay for equal work"—whether in domestic laws like Britain's Equal Pay Act 1970 (later replaced by the Equality Act 2010)¹⁰⁵ or international treaties such as the Banjul Charter, the human rights instrument of the Organization of African Unity, also known as the African Charter on Human and Peoples' Rights¹⁰⁶—prove inadequate.¹⁰⁷ This is partly because, even if men and women

¹⁰² These biases, often invisible upon first glance, manifest within: (i) a limited number of role models for women; (ii) gendered career paths and gendered work; (iii) women's lack of access to networks and sponsors; and (iv) double binds (a "mismatch between conventionally feminine qualities and the qualities thought necessary for leadership"). Ibarra, Ely & Kolb, *supra* note 101.

¹⁰³ RHODE, *supra* note 7, at 162–65; Benard & Correll, *supra* note 38, at 619.

¹⁰⁴ SILTANEN, *supra* note 59, at 28–66.

¹⁰⁵ The Equality Act 2010, which provides women and men with the right to equal pay for equal work, replaces prior acts on equal pay, including the Equal Pay Act 1970, the Sex Discrimination Act 1975, and the equality provisions in the Pensions Act 1995. *See Law*, EQUAL PAY PORTAL, <http://www.equalpayportal.co.uk/the-law/> (last updated Apr. 6, 2017). The law implements a number of worker protections such as equal pay claims and tribunals, implied sex equality clauses in contracts of employment, and specific obligations applying to public sector bodies across Britain. *Id.* Additionally, new regulations recently went into effect in April 2017, and require employers with more than 250 employees to publish certain internal metrics related to the employers' gender pay gap. *See Gender Pay Gap Reporting*, EQUAL PAY PORTAL, <http://www.equalpayportal.co.uk/gender-pay-gap-reporting/> (last updated Apr. 28, 2017); *see also* Katie Allen, *UK's Gender Pay Rankings Will Put Discrimination Under Spotlight*, GUARDIAN (Apr. 2, 2017), <https://www.theguardian.com/business/2017/apr/02/uk-gender-pay-rankings-will-put-discrimination-under-spotlight>. Though this legislation represents progress, it is apparent that it has not provided a complete solution to the gender pay gap: though the initial Equal Pay Act legislation was passed in 1970, the gender pay gap in Britain in 2016—forty-six years later—was still 9.4% (meaning that women made 9.4% less than men in 2016). *The Gender Pay Gap—What It Is and What Affects It?*, OFF. FOR NAT'L STAT. (Oct. 26, 2016), <http://visual.ons.gov.uk/the-gender-pay-gap-what-is-it-and-what-affects-it/>.

¹⁰⁶ For further detail on the equality provisions of this legislation, see MOONEY COTTER, *supra* note 15, at 115–23; *Legal Instruments: African Commission on Human and Peoples' Rights*, AFRICAN COMM'N ON HUMAN & PEOPLE'S RTS. <http://www.achpr.org/instruments/achpr/>.

¹⁰⁷ Charlesworth, Chinkin & Wright, *supra* note 10, at 636–37 ("Article 15 [of the Banjul Charter] is significant in that it guarantees that the right to work includes the right to 'receive equal pay for equal work.' This right might be useful to women who are employed in jobs that men also do. The difficulty is that most African women, like women elsewhere, generally do not perform the same jobs as men."); MOONEY COTTER, *supra* note 15, at 23–35, 215–17.

in the *same* profession are guaranteed to be paid equally, a larger issue is that male-dominated professions tend to have higher salaries than female-dominated professions.¹⁰⁸ The gender wage gap correlates roughly to this quality—the femaleness of a profession—and affects women of all races, backgrounds, and income levels.¹⁰⁹

The inequalities built into the law and the market coincide where legislators and employers construct wage and benefit packages geared toward male needs, based on the assumption that male responsibilities include only limited care obligations within the household.¹¹⁰ The “ideal worker” is regularly held out as a male—someone not preoccupied by children at home or other commitments.¹¹¹ This assumption—that, within a partnership, there is someone (the woman) at home taking care of domestic care labor—reinforces the market/family dichotomy and makes it that much harder for women to step outside the box they have been placed in.

C. Time Constraints and Proposed Policy Solutions

Time constraints are a major cause of women’s lower earnings and productivity.¹¹² Time use worldwide is gendered. Variances in time use primarily result from the differences in care responsibilities, specifically from “differences in men’s and women’s productivity in house, care, and market work and in their ability to substitute market inputs for home time”; when taking all of these categories into consideration, women work more than men.¹¹³ In every country, housework responsibilities are divided unevenly, with women disproportionately responsible for housework and care labor.¹¹⁴

¹⁰⁸ See MOONEY COTTER, *supra* note 15, at 29–35 (“Systemic gender segregation along with women’s historical dependence on men have served to reinforce masculinity as having mechanical and technical skills, and femininity as having patience and selfless dedication for repetitive tasks. This ideology is tantamount to a weapon that excludes women from the mainstream of society, and entrenches gender inequity. The wage difference between sectors and establishments is reinforced by the general system of job evaluation for pay equity on a per establishment basis, with little coordination across industry or country.”).

¹⁰⁹ MOONEY COTTER, *supra* note 15, at 28; THE SIMPLE TRUTH ABOUT THE GENDER PAY GAP: SPRING 2016 EDITION 10–15 (2016).

¹¹⁰ Chinkin, *supra* note 29, at 147; Rittich, *supra* note 90, at 232.

¹¹¹ Munn & Greer, *supra* note 12, at 21.

¹¹² WORLD DEVELOPMENT REPORT, *supra* note 39, at 198.

¹¹³ *Id.* at 217, 221.

¹¹⁴ Women complete 1.5 times more housework than men in Cambodia and Sweden, three times more in Italy, and six times more in Iraq. *Id.* at 217. As couples increase in wealth and education, these gender differences in housework labor decline. *Id.* at 218. See also Naomi R. Cahn, *Gendered Identities: Women and Household Work*, 44 VILL. L. REV. 525, 530–34 (1999).

These time constraints often prevent women from accessing formal institutions, decrease women's participation in politics, and push women into "women friendly" jobs and volunteer activities.¹¹⁵ Time constraints also play a role in trapping women in low-paying jobs and low-productivity businesses, which are often the same jobs that have the flexible hours necessary for them to accomplish all extra responsibilities that are on their plates.¹¹⁶

Constraints on women's time can be addressed through a range of policy approaches, including flexible childcare programs, paid and nontransferable parental leave policies, infrastructure investments, and road and technology improvements.

First, increased access to child and elderly care could help ease women's busy schedules and make more time for economic activity.¹¹⁷ This service can be provided directly by the government, by the private sector, by nongovernmental organizations (NGOs), or by employers, with or without public subsidies and regulation.¹¹⁸ Subsidized childcare has been shown to increase the hours women work and raise participation in formal employment among female workers.¹¹⁹ However, such success is not guaranteed. Mothers in the workforce have a diverse set of needs that cannot be met by a single childcare solution; the programs must be responsive to the specific constraints they face. For example, subsidized childcare programs implemented in Brazil and Norway did not bring more mothers into the workforce.¹²⁰ Rather, the publicly provided programs simply replaced fairly cheap, informal arrangements that had already been established.¹²¹ On-site daycare programs can help women who are self-employed or work in rural areas.¹²² Employer-provided programs are especially effective when many employees are grouped in a single area (e.g., in Kenya on coffee plantations).¹²³ Lengthening the

¹¹⁵ WORLD DEVELOPMENT REPORT, *supra* note 39, at 179–80.

¹¹⁶ *Id.* at 201.

¹¹⁷ *Id.* at 222, 297.

¹¹⁸ *Id.* at 297.

¹¹⁹ *Id.* at 222. Notably, the converse is true when care options in the marketplace are unavailable: "in Botswana, Guatemala, Mexico, and Vietnam, the lack of child care pushes mothers from formal into informal employment." *Id.*

¹²⁰ *Id.* at 297.

¹²¹ *Id.*

¹²² *Id.* at 298.

¹²³ *Id.*

school day or lowering the age upon which children enter the school system are also potential solutions to fulfill women's childcare responsibilities.¹²⁴

Second, improving parental leave policies could ease women's time restraints. The effectiveness of the leave is determined by who pays, by the proportion of regular wages covered during the leave period, and by the length of the leave.¹²⁵ Parental leave policies can be utilized for different purposes: to bolster gender norms or challenge them.¹²⁶ For example, providing *only* maternity leave builds around the notion that the mother is the primary caregiver and will be the only one with childcare responsibilities, but offering nontransferable maternity *and* paternity leave undermines traditional assumptions and works to nudge fathers into caregiving.¹²⁷

Third, infrastructure investments such as electrification and expanded access to water closer to households can help free up women's time, especially in more rural areas in developing countries.¹²⁸ In Sri Lanka, electrification not only eased demands on women's time, but also gave men an opportunity to become more involved in household tasks.¹²⁹ Finally, improving roads and access to technology such as the Internet and mobile phones helps women participate in markets with more ease.¹³⁰ In Peru, the upgrading of pedestrian paths allowed women to travel more safely, thus leading to income increases.¹³¹

D. Parental Leave Policies

Parental leave policies, as opposed to alternative family-friendly policies such as subsidized child care, have more potential to influence gender equality within the household because parental leave is placed precisely at the confluence of a woman's unburdened childfree life and the transition into her role as the family unit's primary caregiver.¹³² It is at this pivotal point that parents are most likely to establish caregiving behaviors, and thus, when placed at this juncture, strong family leave policies can restrain conventional

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 299.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 299–300.

¹³¹ *Id.* at 300.

¹³² *See Father's Leave*, *supra* note 36, at 16.

norms before they are firmly established within the household.¹³³ Specifically, paternity leave has many benefits for both the mother and child: “paternity leave—and especially longer leaves of several weeks or months—can promote parent-child bonding, improve outcomes for children, and . . . increase gender equity at home and at the workplace.”¹³⁴ Time off from work during the transition to parenthood for new fathers plays a significant role in developing this culture of active co-parenting.¹³⁵

Many market reforms thus far have failed to fully equalize economic opportunities for women and men because they simply reproduce the inequalities of the family outside the home by carrying the sexual identities and social meanings traditionally attached to femaleness into the market.¹³⁶ This reality highlights the need to aim policies instead at the core of the family so as to tackle gender roles from within. Sharing childcare and housework responsibilities equally between mother and father within the home gives women the freedom to pursue increased opportunities in the marketplace.¹³⁷ Remedying imbalances embedded within current leave policies is vital to confronting traditional gender norms at the heart of a couple’s decision on how to divide care labor within the household.¹³⁸ Restructuring laws to empower both men and women to take time off of work after childbirth could lead to this more equitable division of work between parents.¹³⁹

III. LEAVE PROVISIONS

The international assortment of family leave policies across both developed and developing countries interacts with broader social traditional views to skew the distribution of responsibility for child care.¹⁴⁰ Virtually all countries offer paid maternity leave, while fewer than half of the countries provide men with access to paid leave.¹⁴¹ Among the countries that do offer some form of paternity leave, many of the policies are inadequate.¹⁴² Parental leave

¹³³ *Id.* at 16.

¹³⁴ DEP’T OF LABOR, POLICY BRIEF, PATERNITY LEAVE: WHY PARENTAL LEAVE FOR FATHERS IS SO IMPORTANT FOR WORKING FAMILIES 1 (2015) [hereinafter DEP’T OF LABOR POLICY BRIEF].

¹³⁵ Rehel, *supra* note 64, at 115; *see infra* Part IV.

¹³⁶ Olsen, *supra* note 8, at 1543–59.

¹³⁷ *Id.* at 1559.

¹³⁸ *Cf. id.* at 1559.

¹³⁹ Olsen, *supra* note 8, at 1558–59.

¹⁴⁰ *See* RAY, GORNICK & SCHMITT, *supra* note 93, at 3.

¹⁴¹ DEP’T OF LABOR POLICY BRIEF, *supra* note 134, at 1.

¹⁴² *Id.*

policies—a specific type of leave that is in theory available for both parents to divide and use as they choose—are regarded by the ILO as an important aspect of integrating parents’ work and family responsibilities; however, in practice they are most often taken up by women rather than men, and thus do not challenge traditional behaviors as broadly as desired.¹⁴³

A. Characteristics of Leave Policies

1. Types of Leave

Maternity leave is leave available for mothers after the birth of a child and is intended to protect the health and economic opportunities of women in the labor force.¹⁴⁴ Every country aside from the United States and Papua New Guinea guarantees some form of paid maternity leave.¹⁴⁵

Paternity leave is generally defined as “a father-specific right to take some time off work after the birth of a child.”¹⁴⁶ As of 2014, paternity leave entitlements could be found in national legislation of at least seventy-nine countries out of 167 for which data are available, with seventy-one of these paid entitlements.¹⁴⁷ However, even though almost half of countries studied provide for paternity leave, often the take-up rates by fathers of these policies are very low.¹⁴⁸ For example, among European countries, less than ten percent of both forms of leave (paternity and parental) are taken by fathers.¹⁴⁹

Parental leave is a relatively long-term form of leave that is usually available to either or both parents, usually after the specified period of maternity or paternity leave elapses.¹⁵⁰ The ILO reports that sixty-six of 169

¹⁴³ Int’l Labour Org., *Workers with Family Responsibilities Recommendation*, Preamble, ILO Recommendation No. 165 (1981); INTERNATIONAL LABOUR ORGANIZATION, MATERNITY AND PATERNITY AT WORK: LAW AND PRACTICE ACROSS THE WORLD 62 (2014) [hereinafter MATERNITY AND PATERNITY AT WORK]

¹⁴⁴ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 8.

¹⁴⁵ *Id.* at 16.

¹⁴⁶ *Father’s Leave*, *supra* note 36, at 15.

¹⁴⁷ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 52, 57.

¹⁴⁸ *Father’s Leave*, *supra* note 36, at 15.

¹⁴⁹ EUROPEAN PARLIAMENT STUDY, *supra* note 97, at 28.

¹⁵⁰ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 60; *Father’s Leave*, *supra* note 36, at 15. Some countries (Egypt, Guinea, Morocco, Serbia, Turkey, Chile, Bahrain, Iraq, Jordan, Kuwait, and Syria) provide that only mothers can take advantage of national parental leave provisions. MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 150–63.

countries have parental leave policies.¹⁵¹ These provisions are most common in developed countries and in Eastern European and Central Asian countries, and rarest in African, Latin American, and Caribbean countries.¹⁵² In countries that utilize parental leave over other types of leave, there is a broad scope of policy choices in terms of eligibility, payment, duration, possible flexibility in usage, the age of the child to be cared for, and transferability between parents.¹⁵³ Most countries set out parental leave as a shared entitlement, meaning that either parent has the right to take parental leave, and the parents determine the allocation of leave themselves.¹⁵⁴ Alternatively, other countries “allocate[e] individual rights within parental leave, which cannot be transferred to the other parent,” meaning that a parent who does not use his or her (usually his) “‘quota’ loses it.”¹⁵⁵ In many countries, less than one in five fathers take any portion of parental leave;¹⁵⁶ rather, long parental leaves are utilized by women—which can in turn have negative implications for gender equality in the labor force and for division of labor in the home.¹⁵⁷ Thus, various parental leave policy solutions attempting to improve men’s take-up rates and overall share of parental leave include “adequate compensation during leave, allocating defined portions of parental leave as individual and non-transferable, rather than shared entitlements, [implementing incentivization structures, e.g., bonuses,] and increasing the flexibility with which leaves can be taken.”¹⁵⁸

Note that there are some countries that do not specify between maternity, paternity, and parental leave, instead collapsing the three under a single system.¹⁵⁹ Norway and the United States follow this route.¹⁶⁰ Moreover, some countries do not *technically* specify paternity leave for fathers but provide for non-transferable, individual father-only parental leave. For example, Iceland’s parental leave reserves, out of a nine-month total, three months for mothers

¹⁵¹ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 64.

¹⁵² *Id.*

¹⁵³ *Id.* at 61.

¹⁵⁴ *Id.* at 62.

¹⁵⁵ *Id.*

¹⁵⁶ Org. for Econ. Co-operation and Dev., *Parental Leave: Where are the Fathers?*, OECD POLICY BRIEF, at 1 (2016), <https://www.oecd.org/policy-briefs/parental-leave-where-are-the-fathers.pdf>.

¹⁵⁷ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 61.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 68.

¹⁶⁰ *Id.* In Norway, all leave policies are treated as “parental leave.” *Id.* In the United States, there is no distinction between maternity or paternity; rather, the Family and Medical Leave Act guarantees qualified “employees” with twelve weeks of unpaid leave following the birth or adoption of a child. *Id.*; Family and Medical Leave Act of 1993, 29 U.S.C. § 2612 (2012).

and three months for fathers, with the remaining three months available to be taken by either parent.¹⁶¹

2. Length

The ILO's minimum recommended standard for maternity leave is fourteen weeks,¹⁶² and they recommend Members endeavor to extend this period to at least eighteen weeks.¹⁶³ The length of maternity leave afforded women generally has a positive effect on their health and participation in the work force, but there are certain characteristics that can be detrimental, or even prejudicial.¹⁶⁴ Too short of a maternity leave can push women back to work before they are ready.¹⁶⁵ This affects not only the health of the mother, but also the health of the child, as it limits a mother's ability to breastfeed.¹⁶⁶ Too long of a maternity leave can weaken a mother's ties to the labor market and make her less competitive, which can result in lower wages and can also cause employers to discriminate from hiring women of child-bearing age.¹⁶⁷

Paternity leave entitlements around the world are much shorter than maternity leave provisions, ranging from one day in Tunisia to ninety days (fifty-four working days) in Iceland, Slovenia, and Finland.¹⁶⁸ Only five countries, out of the seventy-nine that have paternity leave legislation, afford fathers a leave period of more than two weeks.¹⁶⁹ Unlike with maternity leave, there is no ILO minimum standard for paternity leave.¹⁷⁰ Studies show that at least two or three weeks are necessary to build a foundation for gender equality

¹⁶¹ Bjorn T. Arnarson & Aparna Mitra, *The Paternity Leave Act in Iceland: Implications for Gender Equality in the Labour Market*, 17 APPLIED ECON. LETTERS 677 (2010).

¹⁶² *Maternity Protection Convention*, ILO Convention No. 183, Art. 4, ¶1 (2000); MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 7.

¹⁶³ Int'l Labour Org., *Maternity Protection Recommendation*, Art. 1, ILO Recommendation No. 191 (2000).

¹⁶⁴ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 7.

¹⁶⁵ *Id.* at 8.

¹⁶⁶ *Id.*

¹⁶⁷ EUROPEAN PARLIAMENT STUDY, *supra* note 97, at 25; THE GLOBAL GENDER GAP INDEX, *supra* note 1, at 43; WOMEN, BUSINESS AND THE LAW 2016: GETTING TO EQUAL, *supra* note 88, at 15.

¹⁶⁸ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 53.

¹⁶⁹ *Id.*

¹⁷⁰ For a discussion of why the ILO should recommend a minimum required standard for paternity leave, see generally Monica Porter, *Combating Gender Inequality at Home and At Work: Why the International Labour Organization Should Provide for Mandatory Paid Paternity Leave*, 48 GEO. WASH. INT'L L. REV. 203, 205 (2015).

at home;¹⁷¹ the European Union directs that countries implement policies affording fathers at least four months of non-transferable leave.¹⁷²

Parental leave policies, when available, can usually be taken after the maternity or paternity leave period. ILO recommendations leave the length of the leave up to the determination of national policies.¹⁷³ In practice, these policies range widely in length. For instance, twenty countries allow either parent to take leave to care for a child up to the age of three (156 weeks).¹⁷⁴ Other countries provide one year (fifty-two weeks), granted to either only mothers (as in Jordan, Morocco, and Serbia) or to either parent (as in Japan and Australia).¹⁷⁵ Nepal provides for four weeks, Finland for twenty-six weeks, and Cuba for thirty-nine weeks.¹⁷⁶

3. *Compensation and Financing*

The ILO's minimum recommended standard for maternity leave compensation is an income replacement standard of two-thirds of previous earnings.¹⁷⁷ Seventy-four countries out of the 167 studied by the ILO conform with this standard.¹⁷⁸ The ILO does not have recommended standards for the compensation of paternity or parental leaves. In seventy-one out of seventy-nine countries that afford fathers paternity leave, it is paid.¹⁷⁹ Most of these policies are compensated at one-hundred percent, though they can also range anywhere from 50%-90%.¹⁸⁰ Out of the sixty-six countries that offer parental leave, thirty-six of these programs are paid and thirty are unpaid.¹⁸¹ Among countries providing parental financial support, the compensation ranges from

¹⁷¹ See Rehel, *supra* note 64, at 117.

¹⁷² Council Directive 2010/18/EU, art. 2, 2009 O.J. (L 68/16) 2–3 (EC).

¹⁷³ ILO Recommendation No. 165, Art. 22; ILO Recommendation No. 191, Art. 10, ¶¶ 3, 4.

¹⁷⁴ See MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 150–63 (identifying Estonia, Mongolia, Czech Republic, France, Germany, Hungary, Lithuania, Poland, Slovakia, Spain, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Republic of Moldova, Russian Federation, Tajikistan, The Former Yugoslav Republic of Macedonia, Ukraine, and Uzbekistan).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 7; Convention Concerning the Revision of the Maternity Protection Convention (Revised) art. 6(3), June 15, 2000, ILO Convention No. 183.

¹⁷⁸ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 18.

¹⁷⁹ *Id.* at 57.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 65.

twenty percent of the minimum wage in Uzbekistan to sixty-seven or higher percentages of previous earnings in eighteen countries.¹⁸²

There are a number of ways that the cash benefits of paid leave can be financed; the most common are contributory schemes, employer liability, or a mixed system of the two.¹⁸³ With regard to maternity leave, the ILO advocates for compulsory social insurance or public funds as the most beneficial for women, as opposed to individual employer liability.¹⁸⁴ Gravitating toward public funds for the payment of leave mitigates discrimination in the labor market.¹⁸⁵

Social insurance programs are linked to employment (often basing eligibility for benefits on length of employment or self-employment), and are contributory programs financed (in most cases compulsorily) mostly by inputs made by employers, employees, or both.¹⁸⁶ Sometimes these programs exist in a tripartite structure where the government also pays a specific percentage of the insurable wage.¹⁸⁷ Self-employed women have four options for maternity benefits: “(1) exclusion from compulsory and voluntary coverage; (2) entitlement to compulsory coverage under the general social security system/scheme; (3) voluntary affiliation with the social insurance system; [or] (4) eligibility for special insurance systems.”¹⁸⁸ In individual employer liability schemes, employers directly bear the entire burden of compensating workers for paid leave policies.¹⁸⁹ Non-contributory schemes separate benefits from employment and generally administer social assistance from the government level.¹⁹⁰ These programs usually compensate at lower rates than social insurance programs.¹⁹¹

Out of countries providing paid maternity leave, fifty-one percent of programs are financed by the government, thirty percent are paid for completely by the employer, and nineteen percent share costs between the

¹⁸² *Id.*

¹⁸³ *Id.* at 20.

¹⁸⁴ ILO Convention No. 183, *supra* note 177, at art. 6(8)

¹⁸⁵ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 20.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 21.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 22.

¹⁹⁰ *Id.* at 24.

¹⁹¹ *Id.*

employer and the government.¹⁹² For paternity leave, fifty-eight percent of programs are paid for by the employer and twenty-eight percent are financed by a social security system, while mixed systems could only be identified in three countries (with the rest unpaid).¹⁹³ Paid parental leave is funded most often by social security systems, sometimes supplemented by public funds contributed by the state through general taxation.¹⁹⁴

*B. Select National Paternity and Parental Leave Policies*¹⁹⁵

The following table provides a snapshot of leave provisions at the national level around the world. I specifically display paternity and parental leave policies here because of their greater ability to affect gender roles within the family and chose these countries to represent a range of the policies available in each region. For a comparison of these policies to countries' maternity leave policies, as well as to view complete data for all countries for which information was available, please see the appendix to this article.

¹⁹² These percentages are based on the 173 countries analyzed for the Women, Business and the Law 2016: Getting to Equal report. WOMEN, BUSINESS AND THE LAW 2016: GETTING TO EQUAL, *supra* note 88, at 15.

¹⁹³ MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 57.

¹⁹⁴ *Id.* at 65.

¹⁹⁵ For a full list of maternity, paternity, and parental leave policies around the world, see Appendix of this article.

Country	Paternity			Parental		
	Duration (in days)	Compensation (% of previous earnings)	Source of funding	Duration (in weeks)	Compensation (% of previous earnings)	Source of funding
AFRICA						
Botswana	No paternity leave	+++	+++	No parental leave	+++	+++
Chad	10 days	100%	Employer liability	Up to 52 weeks (6 months renewable once) (either parent)	Unpaid	+++
Ethiopia	5 days	Unpaid	+++	No parental leave	+++	+++
Guinea	No paternity leave	+++	+++	38 weeks (only mothers)	Unpaid	+++
Kenya	14 days	100%	Employer liability	No parental leave	+++	+++
Somalia	No paternity leave	+++	+++	No parental leave	+++	+++
South Africa	3 days	100%	Employer liability	No parental leave	+++	+++
Zimbabwe	No paternity leave	+++	+++	No parental leave	+++	+++
ASIA						
Bangladesh	10 days	100%	Employer liability	No parental leave	+++	+++
India	No paternity leave	+++	+++	No parental leave	+++	+++
Iran	No paternity leave	+++	+++	No parental leave	+++	+++
Korea, Republic of	3 days	Unpaid	+++	52 weeks (either parent)	40%	Social security (social insurance)
Nepal	No paternity leave	+++	+++	4 weeks (any permanent worker)	Unpaid	+++
Singapore	7 days	100% up to a ceiling	Social security (state)	No parental leave	+++	+++
DEVELOPED ECONOMIES						
Austria	No paternity leave	+++	+++	104 weeks (either parent)	Flat rate benefit	Social security
France	11 working days	100% up to a ceiling	Social security (Health Insurance Fund)	156 weeks, 26 paid for the first child (each parent)	Flat rate benefit (per household)	Social security (social insurance)
Iceland	90 consecutive days	80% up to a ceiling	Social security (social insurance)	13 paid weeks (either parent) + 13 unpaid weeks (each parent)	80% up to a ceiling	Social security (social insurance)

Ireland	No paternity leave	+++	+++	17 weeks (each parent)	Unpaid	+++
Italy	1 day	100%	Social security (social insurance)	26 weeks (each parent)	30%	Social security (social insurance)
Japan	No paternity leave	+++	+++	52 weeks (each parent)	50% up to a ceiling	Social security (social insurance)
Netherlands	2 days	100%	Employer liability	26 weeks (each parent) with part-time work	Unpaid	+++
New Zealand	14 consecutive days	Unpaid	+++	52 weeks (either parent)	Unpaid	+++
Portugal	20 days (10 of which are compulsory)	100%	Social security (social insurance)	Initial Parental Leave: 17 or 21 weeks. Additional Parental Leave: 13 weeks (each parent)	Initial Parental Leave: 100% (or 80% for 21 weeks); Additional Parental Leave: 25%	Social security (social insurance)
Spain	15 calendar days	100% up to a ceiling	Social security (social insurance)	156 weeks (each parent)	Unpaid	+++
United States	No paternity leave	+++	+++	12 weeks (each parent)	Unpaid	+++
EASTERN EUROPE AND CENTRAL ASIA						
Albania	No paternity leave	+++	+++	12 days (either parent)	100%	Employer liability
Azerbaijan	14 calendar days	Unpaid	+++	156 weeks (either parent or actual caregiver)	Flat rate benefit	+++
Kazakhstan	5 days	Unpaid	+++	156 weeks (either parent)	Unpaid	+++
Turkey	No paternity leave	+++	+++	26 weeks (only mothers)	Unpaid	+++
LATIN AMERICA AND THE CARIBBEAN						
Argentina	2 days	100%	Employer liability	No parental leave	+++	+++
Bahamas	7 days	Unpaid	+++	No parental leave	+++	+++
Belize	No paternity leave	+++	+++	No parental leave	+++	+++
Cuba	No paternity leave	+++	+++	39 weeks (either parent)	60%	Social security (social insurance)

Mexico	No paternity leave	+++	+++	No parental leave	+++	+++
Peru	4 days	100%	Employer liability	No parental leave	+++	+++
Venezuela	14 consecutive days	100%	Social security (social insurance)	No parental leave	+++	+++
MIDDLE EAST						
Kuwait	No paternity leave	+++	+++	17 weeks (only mothers)	Unpaid	+++
Saudi Arabia	1 day	100%	Employer liability	No parental leave	+++	+++
Syrian Arab Republic	6 days	Unpaid	+++	52 weeks (only mothers)	Unpaid	+++
Yemen	No paternity leave	+++	+++	No parental leave	+++	+++

Data compiled from the International Labour Organization.

IV. PAID PATERNITY LEAVE AND GENDER EQUALITY

A. Traditional Social Attitudes

The absence of paid paternity leave elevates a father's priorities for work over priorities for family.¹⁹⁶ It says, to a new father and on a macro-policy level, that he is needed at work but not needed at home. Complete denial of paternity leave, as well as providing paternity leave that is woefully inadequate, maintains gender roles by reinforcing the assumption that men are the breadwinners while ignoring their role as fathers and caregivers.¹⁹⁷ So long as men's paternity and care responsibilities are ignored, traditional views will remain—not only in the home but also in the workplace. Conversely, “the design and mix of work-family policies, and in particular leave measures, have enormous gender-transformative potential when they make the achievement of effective gender equality at work and in the household an explicit objective.”¹⁹⁸ Although fathers who are interested in a more equal, less

¹⁹⁶ World Bank Group, *The Junction: Where all Things Diversity & Inclusion Come Together for Change*, at 8 (2010) (“In the absence of a strong program of paternity leave, organizations send a powerful message to the employee: ‘A child is the wife’s responsibility. We do not expect fatherhood to interrupt men’s work, or to be a priority for our male employees. For new fathers, we expect business as usual.’ . . . The choice is clear: a business culture that continues to place ‘a firewall between work and home powerfully privileges male over female employees.’”).

¹⁹⁷ EUROPEAN PARLIAMENT STUDY, *supra* note 97, at 29; MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 52.

¹⁹⁸ EUROPEAN PARLIAMENT STUDY, *supra* note 97, at 29; *see* MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 52.

traditional partnership may self-select themselves for longer periods of leave (if available),¹⁹⁹ better-structured paternity leave policies reduce barriers to leave-taking generally, enabling larger numbers of men to take leave, which in turn normalizes leave-taking.²⁰⁰ Thus, such policies eventually would facilitate leave-taking and, ultimately, responsibility-sharing among fathers who might otherwise be disinclined to do so.²⁰¹

Easier access to paid paternity leave to care for a new child can catalyze cultural change and break down gender stereotypes about work and family.²⁰² These gender stereotypes, as noted in Parts I and II, are a significant structural barrier to increased access to economic opportunities for women. If men are more involved in caring for their children from the start, it sets a pattern for the division of care labor within the household. In Nordic countries, where family-friendly policies have been in place for over four decades, attitudes toward work and care are more gender equal than views in peer countries that have stayed within more traditional boundaries, largely because work-family policies in these countries are less developed.²⁰³

Fathers who have some type of leave available to them but choose not to take it point to structural limitations that restrict their leave-taking: “concerns about reactions from superiors and colleagues; wanting to maximize the weeks of leave available to their partners; and financial limitations.”²⁰⁴ All of these issues can be addressed through effective policies.²⁰⁵

B. An Egalitarian Marriage Ideal

1. Active Co-Parenting

The traditional post-birth arrangement is for women to take time off to recover from birth and adjust to motherhood, while the father continues to support the family in the workplace.²⁰⁶ Even in the most egalitarian of partnerships where the couples’ pre-parenting responsibilities were relatively

¹⁹⁹ Rehel, *supra* note 64, at 119 (“Opting out of leave-taking because of a lack of interest indicates perhaps a more traditional orientation towards gender, parenting, and division of labor.”).

²⁰⁰ *Id.* at 118–19.

²⁰¹ *Id.* at 120.

²⁰² DEP’T OF LABOR POLICY BRIEF, *supra* note 134, at 1.

²⁰³ *Father’s Leave*, *supra* note 36, at 14.

²⁰⁴ See Rehel, *supra* note 64, at 120.

²⁰⁵ See *infra* Part IV(c).

²⁰⁶ See Rehel, *supra* note 64, at 110–11.

equal, “women take on the bulk of unpaid labor, particularly child care,” after the birth of a child.²⁰⁷ Erin M. Rehel argues that if these transitions were made more parallel, active co-parenting would be the result:

[W]hen fathers in heterosexual couples experience the transition to parenthood in ways that are structurally comparable to mothers, they come to think about and enact parenting in ways that are more similar to mothers By drawing fathers into the daily realities of child care, free of workplace constraints, extended time off provides the space necessary for fathers to develop the parenting skills and sense of responsibility that then allows them to be active co-parents rather than helpers to their female partners. This shift from a manager-helper dynamic to that of coparenting creates the opportunity for the development of a more gender-equitable division of labor.²⁰⁸

Transitioning to parenthood without the demands and constraints of work allows fathers space to develop a sense of responsibility that is often assigned as a core element of mothering.²⁰⁹ Such extended time off is defined by Rehel as greater than three weeks,²¹⁰ though the purported ideal leave time varies by study. A study by the OECD associates two weeks or more of leave with a father’s involvement in childcare activities compared to fathers who took no leave.²¹¹ A 2010 EU Council Directive entered into partly to encourage men to assume an equal share of family responsibilities entitles men and women workers to at least a period of four months of non-transferable parental leave, though compliance among countries is minimal.²¹²

2. *Gender-Equitable Division of Care Labor*

An uptake in paternity-leave-taking challenges the traditional gender norms that lie at the heart of the unequal division of domestic tasks in the home.

²⁰⁷ *Id.* at 111.

²⁰⁸ *Id.* at 110.

²⁰⁹ *Id.* at 111.

²¹⁰ *Id.* at 117. In discussing her study, Rehel considers the following about the dividing line in defining “extended”:

After three weeks, the initial stress and chaos of the immediate post-birth period begins to subside and patterns and routines develop. It was also often the case that extended family members who came to help decreased their involvement after the first two or three weeks, leaving the couple to parent on their own. The presence of extended kin appeared to serve as a block to father involvement, as suggested by prior research. Given these two factors, it is only when fathers remain at home beyond the first three weeks that they begin to develop a parenting style mirroring that of mothers.”

Id. (citation omitted).

²¹¹ *Father’s Leave*, *supra* note 36, at 9, 33, 39.

²¹² Council Directive 2010/18/EU, art. 2, 2009 O.J. (L 68/16) 2, 3 (EC).

When men choose to stay home at the beginning of parenthood, the division of household and childrearing responsibilities becomes more gender-balanced over time.²¹³ When both genders gain an appreciation for the work it takes to take care of a child, there is an equalizing dynamic within the home.

Leave-taking allows men to build task-sharing skills they can integrate into their relationship. Sharing childcare tasks, especially during a child's first year of life, can advance less stereotyped gender roles, breaking down the conventional image of the mother as the exclusive caregiver and the father as the exclusive breadwinner.²¹⁴ A "deeper understanding of caretaking" can contribute to changing social attitudes over time, reducing persistent gender gaps in paid and unpaid work—an important aspect of pushing toward gender equality.²¹⁵ Because a mother's ability to return to work after taking leave often depends on her ability to share responsibilities with her spouse, a changed notion of how to divide caregiving tasks within a family is especially important for equalizing economic opportunities for women as a whole.²¹⁶

C. Policy Choices

Although both parental leave and paternity leave policies can support gender equality within the household and the market, paid paternity leave—or an equivalent, non-transferable, exclusive-to-fathers portion of parental leave—specifically targets the problem in the most precise manner.²¹⁷ Transferable parental leave that completely allocates distributional choices to the mother and father has the potential to reproduce sex-blind inequality in the same way as in reforms meant to equalize opportunities for women in the market.²¹⁸ Such policies are great in theory if parents decide to split it equally but flawed in practice if the entire leave period is just utilized by the mother. Implementing paternity leave policies, however, would challenge currently held beliefs regarding family obligations and expectations about men and women.

²¹³ DEP'T OF LABOR POLICY BRIEF, *supra* note 134, at 3; THE GLOBAL GENDER GAP INDEX, *supra* note 1, at 43; *Parental Leave: Where are the Fathers?*, *supra* note 156, at 1; WOMEN, BUSINESS AND THE LAW 2016: GETTING TO EQUAL, *supra* note 88, at 15.

²¹⁴ *Father's Leave*, *supra* note 36, at 16.

²¹⁵ *Id.* at 41; Rehel, *supra* note 64, at 122.

²¹⁶ See WOMEN, BUSINESS AND THE LAW 2016: GETTING TO EQUAL, *supra* note 88, at 15–16.

²¹⁷ See EUROPEAN PARLIAMENT STUDY, *supra* note 97, at 21, 27; RAY, GORNICK & SCHMITT, *supra* note 93, at 12–13 ("Policies that allow families to allocate paid and unpaid leave heavily or even exclusively for mothers can reinforce traditional gender roles and women's disadvantage in the labor market.").

²¹⁸ See Olsen, *supra* note 8, at 1547.

The Center for Economic and Policy Research's study titled "Parental Leave Policies in 21 Countries" noted five policy practices that stand out as most important: "(1) generous paid leave; (2) non-transferable quotas of leave for each parent; (3) universal coverage combined with modest eligibility restrictions; (4) financing structures that pool risk among many employers; and (5) scheduling flexibility."²¹⁹ Statistically, "fathers' use of paternity and parental leave is largest when leave is well-paid and when part of the entitlement cannot be transferred, and is lost if not used."²²⁰ Unpaid leave, especially for many low- and middle-income families, is not valuable because even if a job is guaranteed upon returning from a period of leave, families cannot afford the time away from work (and from income).²²¹ And, when the benefit level of taking the leave is low (as it is when the compensation levels are not generous), the leave policy has minimal effect on traditional gender roles.²²²

A form of nontransferable leave (such as a quota for each parent) that divides leave and payments as of right between mothers and fathers best counteracts traditional gender roles and labor-market pressures, leading to a more equal sharing of housework.²²³ If leave time can be allocated wholly to any one parent, social and economic pressures converge to push fathers to transfer benefits they otherwise might use to mothers.²²⁴ This maintains the status quo: mothers as primary caregivers and fathers as primary breadwinners with extremely reduced roles in caregiving.²²⁵ The biggest cost of this is that mothers' attachments to paid work are weakened.²²⁶ Conversely, nontransferable policies provide women with increased job security and financial support, help mothers spend less time outside of the labor force, increase mothers' long-term labor-market prospects and lifetime earnings, and strengthen the expectation that fathers share in providing child care.²²⁷ Social

²¹⁹ RAY, GORNICK & SCHMITT, *supra* note 93, at 2.

²²⁰ *Father's Leave*, *supra* note 36, at 16. Implementing paternity leave benefits compensated at 100% of previous earnings in Estonia increased take-up of leave from 14%–50% of eligible fathers in 2008. MATERNITY AND PATERNITY AT WORK, *supra* note 143, at 59; *see also Parental Leave: Where are the Fathers?*, *supra* note 156, at 1–2.

²²¹ RAY, GORNICK & SCHMITT, *supra* note 93, at 7.

²²² *See id.* at 13.

²²³ *Id.* at 10; Andreas Kotsadam & Henning Finseraas, *The State Intervenes in the Battle of the Sexes: Causal Effects of Paternity Leave*, 40 SOC. SCI. RES. 1611, 1619–20 (2011).

²²⁴ RAY, GORNICK & SCHMITT, *supra* note 93, at 19–20.

²²⁵ *See id.* at 20.

²²⁶ *See id.*

²²⁷ *Id.* at 10.

insurance financing—where paid leave benefits are financed through payroll taxes on a national or regional level—is important because it minimizes employers’ motive to discriminate against potential leave-takers.²²⁸ Sharing the cost of paid leave across all employers reduces the burden on individual employers.²²⁹ Flexible scheduling is also valuable in that it allows parents to take part-time leave as opposed to full-time leave.²³⁰

When longer, well-paid, nontransferable paternity leave programs are available (as described above), studies show that fathers increase their use of these policies. In Iceland, the approval of the Paternal Leave Act in 2000—lengthening total parental leave time to nine months and apportioning three months of that time as an independent right for fathers—narrowed the gender gap in the number of maternity and paternity recipients and increased the length of leave men took from fourteen days to ninety-five days, the maximum independent right to leave fathers had before the new law was enacted.²³¹ In Norway, after the introduction of four weeks of “use it or lose it” leave for fathers in 1993, the take-up rate for fathers rose from four percent before the reform to seventy percent only two years after its implementation.²³² After Spain introduced a thirteen-day non-transferable paternity leave in 2007, the percentage of new fathers that took the leave rose from 35.2% in 2007 to 55.2% in 2009.²³³

V. THE WTO, PATERNITY LEAVE, AND INTERNATIONAL LABOR STANDARDS

An international effort to expand access to parental leave policies—specifically, to paternity leave policies—is necessary to build a strong foundation for legal change at the national level. But why take it to this stage? Parental leave policies are individual state decisions implemented in law at the

²²⁸ *Id.* at 17, 20.

²²⁹ *Id.* at 20.

²³⁰ For example, Portugal gives parents a choice between three months of full-time parental leave or twelve months of part-time leave. RAY, GORNICK & SCHMITT, *supra* note 93, at 18. Other countries also have statutes that allow parents to adjust their working hours until the youngest child reaches a certain age. This set-up especially helps professional parents take leave while maintaining their relationships with their employers, an arrangement that is especially important for gaining seniority and protecting career prospects. *See generally id.* at 18–20.

²³¹ Bjorn Thor Arnarson & Aparna Mitra, *The Paternity Leave Act in Iceland: Implications for Gender Equality in the Labour Market*, 17 APPLIED ECON. LETTERS 677, 678 (2010).

²³² Kotsadam & Finseraas, *supra* note 223, at 1612.

²³³ Lorenzo Escot, José Andrés Fernández-Cornejo & Carlos Poza, *Fathers’ Use of Childbirth Leave in Spain: The Effects of the 13-Day Paternity Leave*, 33 POPULATION RES. POL’Y REV. 419, 424 (2014).

domestic level, and arguably employing international law in this area is impractical and unnecessary. On the contrary, women and gender issues are significant on an international level, and legal solutions for gender inequality have not been addressed to the extent necessary.²³⁴ Charlesworth, Chinkin, and Wright demonstrate that the international legal order is a gendered system, mimicking the male dominance of the public/private divide seen at the domestic level and discounting women's voices and concerns generally.²³⁵ They argue that "both the structures of international lawmaking and the content of the rules of international law privilege men; if women's interests are acknowledged at all, they are marginalized."²³⁶

National policies as well as international laws and agreements organize family relationships and shape the everyday bargaining that goes on within households.²³⁷ International law affects state law; it impacts what states can and cannot do, with the ability to both constrain states from adopting certain policies and promote the adoption of other policies. Through an economic lens, decisions made within individual households around the world—such as whether one or both spouses will work—are decisions that engage both the family and the market.²³⁸ These feedback loops between the market and family operate on both a national and international level.²³⁹ Globalization and the increasing interaction and dependency of foreign markets on each other mean that, in the aggregate, these individual decisions affect international trade; thus, global rules are appropriate to regulate them.²⁴⁰ While the household is the relevant institution we seek to change, we must reach households on an international level. National change alone can only provide partial equality if the overarching international governance structure does not also prioritize similar change.

But which international institution or organization is the most appropriate body to advocate for international adoption of adequate leave policies? Parental leave policies are naturally associated with labor and employment, as a worker's ability to take time off after having a child is tied to his or her job

²³⁴ CHOUDHURY, *supra* note 101, at 36.

²³⁵ Charlesworth, Chinkin & Wright, *supra* note 10, at 627.

²³⁶ *Id.* at 614–15.

²³⁷ Halley & Rittich, *supra* note 85, at 766–67; *see also supra* Part II(a).

²³⁸ Halley & Rittich, *supra* note 85, at 766–67.

²³⁹ Rittich, *Families on the Edge*, *supra* note 90, at 132–34.

²⁴⁰ *See* Barbara Evers, *Gender Bias and Macro-Economic Policy: Methodological Comments from the Indonesian Example*, in *THE STRATEGIC SILENCE: GENDER AND ECONOMIC POLICY* 117, 119 (Isabella Bakker ed., 1994).

benefits—whether these benefits are extended by an employer, by the government, or by some combination of both. The ILO, as the international standard-bearer for labor issues, seems like the natural answer to the problem, but the organization’s weak enforcement mechanisms have thus far prevented it from invoking real change. I argue instead that labor advocates should take another look at linking labor and trade. Economic, social, and cultural rights (the overarching umbrella that labor rights fall under) are harder to implement than civil and political rights, which are prioritized in international law.²⁴¹ But these “more difficult” rights are the areas which most oppress women;²⁴² this is why they need attention from an organization that has institutional mechanisms in place that can give teeth to labor and can genuinely impact a country’s trade relationships when they do not comply with the agreed-upon standards. The WTO, with its almost universal membership and highly effective and efficient dispute settlement system, is in a position to hold nations accountable for their labor standards and, by doing so, work toward a vision of equal economic opportunity for both women and men.

A. *Embedded Liberalism*

The “embedded liberalism”²⁴³ of the post-war trade regime, stemming from the economic instability of the late nineteenth century and the interwar period, “combined a commitment to free markets with a belief in the responsibility of governments to mitigate the social costs associated with free markets.”²⁴⁴ During the negotiations for the Havana Charter, the American vision of free trade—or, rather, non-discriminatory trade—converged with the British prioritization of full employment policies.²⁴⁵ The international authority that prevailed²⁴⁶ reflected both power and legitimate social purpose: a compromise

²⁴¹ Charlesworth, Chinkin & Wright, *supra* note 10, at 635.

²⁴² *Id.*

²⁴³ See Robert Howse, *From Politics to Technocracy—and Back Again: The Fate of the Multilateral Trading Regime*, 96 AM. J. INT’L L. 94, 97 (2002) (“[T]rade liberalization was embedded within a *political* commitment, broadly shared among the major players in the trading system of that era, to the progressive, interventionist welfare state.”); John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 INT’L. ORG. 379, 392 (1982).

²⁴⁴ ANDREW LANG, *WORLD TRADE LAW AFTER NEOLIBERALISM: RE-IMAGINING THE GLOBAL ECONOMIC ORDER* 29 (2011).

²⁴⁵ *Id.* at 90–99.

²⁴⁶ Despite the ultimate failure of the Havana Charter, the text of that document informed the philosophy behind the GATT 1947 (which still prevails today, incorporated into the GATT 1994). While trade liberalization and the removal of tariff barriers was an important purpose of the GATT, a multitude of exceptions allowed for the maintenance of domestic stability, even where such policies would have a major impact on trade. The substantive policy consensus shared by the negotiators at the time was the product of a

both incorporating liberal trade policy and giving a State the power to intervene for the purposes of securing domestic stability and attaining full and stable employment.²⁴⁷ In this post-war international trading order, trade was not *connected* with other liberal theories (such as human rights or labor) because those areas of public international law were instead embedded *within* the system.²⁴⁸ It was not until the rise of neoliberalism in the 1970s and, more significantly, the reinterpretation of the international trade order since the completion of the Uruguay Round, that both the trade regime and domestic actors turned away from embedded liberalism, emphasizing the freeing of markets rather than the social purposes associated with the post-war welfare state.²⁴⁹

B. *Linking Trade and Labor Standards*

The relationship between the trade regime and the human rights regime has long been a delicate one, marked both by mutual institutional isolation and interwoven political ideologies.²⁵⁰ Although human rights and trade have similar goals—raising the standard of living,²⁵¹ ensuring human well-being, and promoting development, among others²⁵²—in practice, the two fields have more often than not resisted integration.²⁵³ The two bodies of law function quite differently: international human rights law strengthens the substantive

particular political and social context that emphasized international stability as the overarching policy goal. These informal norms of the trade community itself ultimately shaped the interpretation of GATT disciplines in disputes more than that of the formal text. *Id.* at 195–97, 211–16.

²⁴⁷ *Id.* at 192–94; Ruggie, *supra* note 243, at 385.

²⁴⁸ JOOST PAUWELYN, CONFLICT OF NORMS IN PUBLIC INTERNATIONAL LAW: HOW WTO LAW RELATES TO OTHER RULES OF INTERNATIONAL LAW 34–35 (2003). Notably, the Havana Charter allowed Members to employ trade measures against “unfair labour conditions.” Article 7 provided that “[t]he Members recognize that unfair labour conditions particularly in production for export, create difficulties in international trade, and accordingly each member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.” U.N. Conference on Trade and Employment, *Final Act and Related Documents*, U.N. Doc. E/CONF. 2/78 (Apr. 1948).

²⁴⁹ LANG, *supra* note 244, at 221–72; James Thuo Gathii, *Re-characterizing the Social in the Constitutionalization of the WTO: A Preliminary Analysis*, 7 WIDENER L. SYMP. J. 137, 148–52 (2001); Howse, *From Politics to Technocracy*, *supra* note 243, at 101–08.

²⁵⁰ See generally LANG, *supra* note 244, at 23–123.

²⁵¹ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement].

²⁵² Caroline Dommen, *Human Rights and Trade: Two Practical Suggestions for Promoting Coordination and Coherence*, in HUMAN RIGHTS AND INTERNATIONAL TRADE 199, 199 (Thomas Cottier et al. eds., 2005).

²⁵³ See Christine Breining-Kaufmann, *The Legal Matrix of Human Rights and Trade Law: State Obligations Versus Private Rights and Obligations*, in HUMAN RIGHTS AND INTERNATIONAL TRADE 1, 3 (Thomas Cottier et al. eds., 2005).

rights of individuals, while international trade addresses trade issues at the level of sovereign states; human rights regimes impose positive obligations on states to “respect, protect, and fulfill” certain rights, while WTO law imposes mainly negative obligations on states; within international human rights law, the principle of non-discrimination and equality is derived from human dignity, while international trade law respects these values as a means to the end of trade liberalization and market access.²⁵⁴

Similarly, trade and labor have also rebuffed each other throughout their respective histories. The WTO has thus far rejected formal linkage of workers’ rights and trade liberalization. The WTO in the Singapore Declaration ceremoniously shifted responsibility for core labor standards to the ILO in 1996:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.²⁵⁵

Critics often point to this clear institutional-specialization decision when arguing that social issues are beyond the competency of the WTO, and that instead the ILO is the appropriate agency with the expertise to administer international labor standards.²⁵⁶ Opponents of linking trade and labor also make a number of additional arguments for keeping labor out of the WTO, including: the understanding of labor as a comparative advantage in trade, especially for developing country Members; the risk that Member States will conceal protectionist trade measures under measures purporting to advance

²⁵⁴ *Id.*

²⁵⁵ World Trade Organization, Ministerial Declaration of 18 December 1996, WTO Doc. WT/MIN(96)/DEC.

²⁵⁶ See William B. Gould IV, *Labor Law for a Global Economy: The Uneasy Case for International Labor Standards*, in INTERNATIONAL LABOR STANDARDS: GLOBALIZATION, TRADE, AND PUBLIC POLICY 81, 101–03 (Robert J. Flanagan & William B. Gould IV eds., 2003); Gathii, *supra* note 249, at 140.

labor standards; and the theory that trade liberalization simply puts resources to more effective use when not impeded by social agendas.²⁵⁷

WTO rules do not obligate Member States to implement social policies, but they do not stand in the way of Member States realizing higher labor standards *for their own citizens*. Parental leave programs, though they can conceptually be considered subsidies, are generally not subject to the WTO rules on subsidies because they do not meet the specificity requirements of the WTO Agreement on Subsidies and Countervailing Measures.²⁵⁸

However, WTO/GATT jurisprudence as it exists today generally does constrain Members from using trade measures to promote observance of core labor standards *for citizens within other Member States*. There is a wealth of literature discussing changing this through a linkage of trade and labor, chiefly by arguing for a reinterpretation of GATT Article XX exceptions to allow for labor-rights-based trade measures (most notably argued for by Professor Robert Howse), but also through various other means such as the creation of independent trade and labor departments within the WTO, through the creation of a side labor agreement within the WTO, or through the establishment of an enforcement system jointly administered by the ILO and the WTO.²⁵⁹

²⁵⁷ See Gathii, *supra* note 249, at 141; Kevin Kolben, *The WTO Distraction*, 21 STAN. L. & POL'Y REV. 461, 461 (2010); Ernst-Ulrich Petersmann, *The "Human Rights Approach" Advocated by the UN High Commissioner for Human Rights and by the International Labour Organization: Is it Relevant for WTO Law and Policy?*, 7 J. INT'L ECON. L. 605, 608 (2004); Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. PA. J. INT'L ECON. L. 61, 68–72 (2001).

²⁵⁸ See Agreement on Subsidies and Countervailing Measures arts. 1.2, 2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1867 U.N.T.S. 14.

²⁵⁹ See generally BOB HEPPLE, *LABOUR LAWS AND GLOBAL TRADE* 129–50 (2005); Salman Bal, *International Free Trade Agreements and Human Rights: Reinterpreting Article XX of the GATT*, 10 MINN. J. GLOBAL TRADE 62, 69 (2001); Michael J. Trebilcock & Robert Howse, *Trade Policy & Labor Standards*, 14 MINN. J. GLOBAL TRADE 261, 286–92 (2005); Andrew T. Guzman, *Trade, Labor, Legitimacy*, 91 CAL. L. REV. 885, 885 (2003); Lyndsay J. Montour, *Connecting the Spheres of Trade and Gender: Creating a Gender-Conscious World Trade Organization*, 47 SUFFOLK U. L. REV. 397, 415–18 (2014); Sope Williams, *The WTO and Labour Rights Revisited*, 14 SRI LANKA J. INT'L L. 135, 154–60 (2002); Daniel S. Ehrenberg, *From Intention to Action: An ILO-GATT/WTO Enforcement Regime for International Labor Rights*, in *HUMAN RIGHTS, LABOR RIGHTS, AND INTERNATIONAL TRADE* 163, 163–80 (Lance A. Compa & Stephen F. Diamond eds., 1996). Compare Robert Howse, *The World Trade Organization and the Protection of Workers' Rights*, 3 J. SMALL & EMERGING BUS. L. 1, 3 (1999) (arguing for reinterpretation of GATT Article XX exceptions to allow for labor-rights-based trade measures), with Yasmin Moorman, *Integration of ILO Core Rights Labor Standards into the WTO*, 39 COLUM. J. TRANSNAT'L L. 555 (2000) (contending that Howse's approach would "frustrate the purpose of WTO-ILO integration and fail to advance to the nondiscrimination principle embodied in the Declaration.").

C. *The ILO's Core Labor Standards: A Gendered Model*

In arguing for a linkage between trade and labor, most authors consider their proposals within the context of the ILO's core labor standards. These standards are codified in the Declaration on Fundamental Principles and Rights at Work, and include "(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."²⁶⁰ The issue with limiting analysis to these four rights is that they are mapped onto the public/private model I discussed earlier and are based in institutional mechanisms that reinforce a gendered model of the market. Past and current workplace norms depend on a particular social paradigm that assumes a gendered division of labor with women performing unpaid labor in the reproductive sphere.²⁶¹ The reality today though is that women are flooding into the work force, and "[a]s the labor force has been 'feminized' and women have ceased to be secondary/peripheral workers, the male norm around which labor law has been structured become[s] both less persuasive and more problematic."²⁶² The ILO notion of what standards count as "core" is thus skewed toward standards that most aid workers who exemplify the male model of employment.

This traditional narrative of labor law informs and positions the centrality of certain policies within the discussion of labor rights overall.²⁶³ The gendered allocation of labor has, historically, allowed men to devote all of their time to the workforce with no need for leave or childcare policies.²⁶⁴ A lack of paternity leave policies reflects the male-focused framework of the economy and the ILO's core labor standards, revealing a traditional conception of what types of workers are in the market (men, rather than both) and who is taking care of children and performing care labor (women, rather than both). In a world where only men worked and women stayed home, parental leave policies were not necessary. Women in this traditional world had the time to recover and take care of children because they were not providing income or working, as there was no need to supplement an income that had been lost or

²⁶⁰ INT'L LABOUR ORG., DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (1998).

²⁶¹ Joanne Conaghan & Kerry Rittich, *Interrogating the Work/Family Divide*, in LABOUR LAW, WORK, AND FAMILY: CRITICAL AND COMPARATIVE PERSPECTIVES 1, 1–2 (2005); Conaghan, *supra* note 28, at 27–30.

²⁶² Conaghan & Rittich, *supra* note 261, at 1.

²⁶³ See Conaghan, *supra* note 28, at 27–30.

²⁶⁴ *Id.*

allow for time off to bond with a child. Men were considered the head of the household and the provider of income—and because there was no need to recover from birth or subsequently take care of the child, a man had no need to leave the labor market after becoming a father. There was no need to produce a gender equitable division of labor within the household because labor had already been divided—men in the market and women in the family. That is no longer the case. It must be recognized that *both* of these responsibilities—working in the labor market and raising children within the family—are undertaken by all workers and are imperative to support the labor market, today and tomorrow. Children—the future of the labor force—cannot raise themselves. To promote a progressive, equal division of labor, both men and women must be given the opportunity to perform childcare. With this in mind, paid paternity leave (as well as the full spectrum of leave programs, including maternity leave and parental leave) becomes vital to labor standards—just as much as the right to collective bargaining or the elimination of discrimination. With the repositioning of work and family into a single sphere, this newfound interdependence should result in policies that recognize the care responsibilities of all workers.

Accordingly, the Agreement on Labor Standards proposed in the next section must be built on a reimagined set of core labor standards, a vision of rights that recognizes the necessity of facilitating a productive work force by supporting its workers' reproductive responsibilities.²⁶⁵

D. A Trade-Related Agreement on Labor Standards

Although the WTO as it is currently structured may not have the apparatuses to obligate Member States to adopt paternity leave policies, given the political will, it has the potential to be a strong force to drive domestic policy transformation with international scope. As proffered by Andrew Lang, there is an emerging post-neoliberal legal imagination representing a contemporary alternative to the formalistic trade-liberalization-only dialogue of the past few decades.²⁶⁶ I see this as leading to an expanded set of ideas about the competence and capacity of the international trade regime: back to the power and legitimate social purpose characterized by embedded liberalism,

²⁶⁵ “[B]y investigating the gender of international institutions—examining the way in which they place men at the center of all their activities—we can develop strategies to enable them to claim a truly human mandate.” Hilary Charlesworth, *The Gender of International Institutions*, 89 AM. SOC’Y INT’L L. PROC. 79, 79 (1995).

²⁶⁶ LANG, *supra* note 244, at 343–53.

but also forward to an even more cooperative future where the breadth of modern globalization can be collectively harnessed to positively impact individuals' daily lives. WTO jurisprudence and General Council decisions reveal that trade could become more socially active. For example, in *US–Gasoline (1996)* and *US–Shrimp (1998)*, the Appellate Body explicitly stated that, though not in those cases, Members could “adopt effective measures to protect endangered species . . . or to otherwise protect the environment.”²⁶⁷ Furthermore, in May 2003, the WTO General Council granted a waiver²⁶⁸ to WTO Members who participated in the Kimberley Process Scheme for Certification of Rough Diamonds, which allowed Member-Participants to violate their trade obligations of non-discrimination and liberalized markets in order to protect human rights in West Africa.²⁶⁹ Thus, the WTO has already shown responsiveness in a social context through these indications of friendlier treatment toward environmental and human rights policies.

This above-described movement toward a vision of a WTO that utilizes trade to protect social rights can be harnessed to return more fully to the roots of the compromise supporting the building blocks of the GATT and to the legitimate social purposes understood by embedded liberalism. I propose that the WTO should pursue an agreement imposing positive obligations on Member States to respect universal labor standards. The effect of this agreement would be to raise the national labor standards of each individual Member State. Specifically, included among these labor standards would be the requirement for States to pass national legislation establishing a minimum standard of maternity, paternity, and parental leaves for their workers. The obligation should apply equally to all Member States, though developing countries with currently weaker labor laws could possibly be allowed additional time during a transition period for implementation. Granted, cooperation among Member States on such a historically tenuous issue may be slow, but the path toward political consensus must start somewhere.

²⁶⁷ “WTO Members are free to adopt their own policies aimed at protecting the environment as long as, in so doing, they fulfill their obligations and respect the rights of other Members under the *WTO Agreement*.” Appellate Body Report, *US – Shrimp*, ¶¶186–6, WT/DS58/AB/R (Oct. 12, 1998). For a similar statement, see Appellate Body Report, *US – Gasoline*, ¶¶29–30, WT/DS2/AB/R (Apr. 29, 1996).

²⁶⁸ General Council Decision, *Waiver Concerning Kimberley Process Certification Scheme for Rough Diamonds*, WTO Doc. WT/L/518 (May 27, 2003).

²⁶⁹ Krista Nadakavukaren Schefer, *Chilling the Protection of Human Rights: What the Kimberley Process Waiver Can Tell Us About the WTO’s Effect on International Law* 2 (NCCR Trade Reg., Swiss Nat’l Ctr. Of Competence in Research, Working Paper No. 2007/03, 2007).

There is precedent for the ratification of such a covered agreement within the WTO structure. A labor agreement could run parallel to the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which creates substantive, positive obligations for states related to the enactment and enforcement of intellectual property rights.²⁷⁰ TRIPS is the only existing covered agreement of the WTO that imposes *positive* obligations on Member States—establishing minimum standards for the regulation of intellectual property rights—rather than simply preventing Member States from taking certain actions. I use TRIPS as an example here because, arguably, labor is as related to trade as is the protection of intellectual property. Both concepts involve rights that go hand-in-hand with the creation of traded goods. While intellectual property rights protect the rights of the inventors developing a good, labor rights protect the rights of the workers building a good. Both sets of rights protect the inputs into commerce and are thus related to trade in this way. Interestingly, similar to the management of labor conventions and recommendations by the ILO, intellectual property rights treaties are administered by the World Intellectual Property Organization (WIPO), including the important Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.²⁷¹ This begs the question of why the institutional competency argument—often used to keep labor in the silo of the ILO—did not prevent the WTO, through TRIPS, from taking up the cause of intellectual property rights from WIPO.

Additionally, many regional trade agreements have successfully established side labor agreements or labor chapters within the trade agreement itself. The North American Free Trade Agreement (NAFTA) between the United States, Mexico, and Canada includes the North American Agreement on Labor Cooperation (NAALC), which obliges states to adequately enforce their own domestic labor laws.²⁷² Violations of this provision can be enforced under the NAFTA dispute settlement mechanism.²⁷³ The U.S.-Jordan Free

²⁷⁰ See generally Adronico Oduogo Adede, *Origins and History of the TRIPS Negotiation*, in *TRADING IN KNOWLEDGE: DEVELOPMENT PERSPECTIVES ON TRIPS, TRADE AND SUSTAINABILITY* 23, 23–35 (Christophe Bellmann et al. eds., 2003).

²⁷¹ Graham Dutfield, *Intellectual Property, Trade and Sustainable Development: Mounting Controversy*, in *TRADING IN KNOWLEDGE: DEVELOPMENT PERSPECTIVES ON TRIPS, TRADE AND SUSTAINABILITY* 1, 4 (Christophe Bellmann et al. eds., 2003).

²⁷² North American Agreement on Labor Cooperation, U.S.-Can.-Mex., Sept. 8, 1993, 32 I.L.M. (1993); Williams, *The WTO and Labour Rights Revisited*, *supra* note 259, at 136–37.

²⁷³ Frank H. Bieszczat, *Labor Provisions in Trade Agreements: From the NAALC to Now*, 83 CHI.-KENT L. REV. 1387, 1389–92 (2008); Williams, *The WTO and Labour Rights Revisited*, *supra* note 259, at 137.

Trade Agreement (Jordan FTA) permits the United States to seek dispute resolution if Jordan fails to perform its obligations under the ILO.²⁷⁴ Also significant is a clause in the Jordan FTA that forbids states from lowering their own domestic labor standards to minimize protections for private citizens.²⁷⁵ The United States-Central America Free Trade Agreement (CAFTA) incorporates a chapter addressing labor, though the language (states must “strive” to ensure ILO labor rights are protected by their laws) is weak and states are given broad discretion to enforce their own labor laws.²⁷⁶ The Trans-Pacific Partnership, signed in February 2016 but with the United States having now pulled out of the agreement, also includes an extensive labor chapter.

The WTO is the most appropriate venue for the tangible enforcement of universal labor standards because of its ability to keep Member States accountable through its dispute settlement system.²⁷⁷ WTO jurisprudence “promotes fidelity to *law*, rather than fidelity to power, and thus unites participants of the world trading system around this ideal.”²⁷⁸ In contrast, the ILO has little ability to reliably ensure enforcement of labor standards. While the ILO has extensive institutional experience in setting labor standards, there are clear weaknesses in the ILO’s enforcement mechanisms: it can monitor States’ application of and compliance with its conventions, but it has no meaningful system of remedies or sanctions for holding countries accountable.²⁷⁹ In contrast, WTO obligations are self-enforced by Member States: “[W]hen a member government believes another member government is violating an agreement or a commitment that it has made in the WTO,” it can file a complaint in the Dispute Settlement Body (DSB).²⁸⁰ The DSB is highly active—having resolved over 500 disputes since the inception of the WTO in 1995—and is a legally binding, effective, and reliable method for resolving conflict.²⁸¹ Furthermore, dispute settlement rulings boast a high

²⁷⁴ Bieszczat, *supra* note 273, at 1397–99.

²⁷⁵ *Id.* at 1399.

²⁷⁶ *Id.* at 1400–01.

²⁷⁷ Holger P. Hestermeyer, *Economic, Social, and Cultural Rights in the World Trade Organization: Legal Aspects and Practice*, in *ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW: CONTEMPORARY ISSUES AND CHALLENGES* 260, 263 (Eibe Riedel et al. eds., 2014).

²⁷⁸ SUNGJOON CHO, *THE SOCIAL FOUNDATIONS OF WORLD TRADE: NORMS, COMMUNITY AND CONSTITUTION* 25 (2014).

²⁷⁹ See Williams, *The WTO and Labour Rights Revisited*, *supra* note 259, at 151.

²⁸⁰ See *Dispute Settlement*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm (last visited Oct. 27, 2017).

²⁸¹ See *Tenth WTO Ministerial Conference, Nairobi, 2015: Briefing Note: Dispute Settlement*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_disputes_e.htm (last visited Oct. 27, 2017).

compliance rate—around ninety percent.²⁸² The TRIPS Agreement provides insight on implementation of new rights into dispute settlement: Article 64 of TRIPS makes disputes about obligations under that Agreement subject to the WTO's dispute settlement procedures.²⁸³ A similar provision of the proposed Labor Agreement could subject obligations regarding minimum standards of labor protection to the dispute settlement procedures as well. In this way, core labor standards—among them, maternity, paternity, and parental leave programs—would be protected by an institutional mechanism with the power to realize protections and sanction noncompliance.

CONCLUSION

This article is built upon a rejection of the dualistic pairs ascribed to gender. The permeation of our modern society by traditional constructs of appropriate gender roles holds women within the confines of the affective, pressuring them to tend to the hearth of the home while at the same time pursuing their own careers. Women flood to the work force in almost equal rates as men, and while the same jobs are formally available to both men and women, inequalities structured within the law and market leave women behind in terms of economic opportunities, equal wages, and career advancement. For women to operate wholly on the same plane as men, we must transcend the male-female dichotomy²⁸⁴ of responsibility in a marriage. Reaching toward an equal division of care labor requires rejecting the notion that sex defines which individual in a partnership is the primary caregiver, or even that a *primary* caregiver exists at all. This is not to say that women do not and would not choose this role by their own volition, even absent the inequalities structured into the framework of our society. But often, the choices we make, rather than reflecting our own personal desires and abilities, reflect instead societal expectations about men and women, differing family obligations, the particular upbringing girls receive in families, and the roles women have played in the past—and traditionally, these roles subordinate women to men.

The repositioning of unpaid care work as integral to the performance and structure of productive activity and the labor market is not just a feminist

²⁸² *Id.*

²⁸³ See TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights Part V, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) (amended Jan. 23, 2017), https://www.wto.org/english/docs_e/legal_e/31bis_trips_e.pdf.

²⁸⁴ See Olsen, *supra* note 8, at 1578.

problem or an economic problem²⁸⁵—it is a human problem with an international scope. Men and women are equally capable of building caregiving into their lives, so long as the laws, policies, and market structures, which govern and constrain their lives, support rather than hinder the equal division of care labor within their household. Adequate parental leave policies, and specifically paternity leave policies, provided to workers around the world would challenge the heart of the traditional gender norms that push women into the reproductive sphere. To facilitate such a far-reaching social transformation, an international institution that already has a far-reaching impact should be utilized to push countries to adopt certain core labor standards (reimagined to include policies not built from gendered employment assumptions). The WTO has shown a tentative openness to address social issues, and, unlike the ILO, it has the enforcement mechanisms to actually hold countries accountable for their domestic laws. Political consensus among Member States may be slow to come by, but linking trade and labor is not an alien concept—many regional trade agreements currently incorporate labor agreements and chapters into their provisions—nor is imposing positive substantive obligations on Member States: TRIPS does just this in the context of intellectual property rights. A WTO Agreement on Labor Standards reinforcing progressive core labor standards would address the inconsistencies in parental leave policies of states around the world and work toward a global economy in which all workers' rights to realize care responsibilities are guaranteed.

²⁸⁵ See Conaghan & Rittich, *supra* note 261, at 2.

APPENDIX

Country	Duration (in weeks)	Compensation (% of previous earnings)	Source of funding	Duration (in days)	Compensation (% of previous earnings)	Source of funding	Duration (in weeks)	Compensation (% of previous earnings)	Source of funding
AFRICA									
Algeria	14 weeks	100%	Social security (social insurance)	3 days	100%	Employer liability	No parental leave	***	***
Angola	13 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Benin	14 weeks	100%	Mixed (50% social insurance, 50% employer)	10 days	100%	Employer liability	No parental leave	***	***
Botswana	12 weeks	50%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Burkina Faso	14 weeks	100%	Social security (social insurance)	10 days	100%	Employer liability	Up to 52 weeks (6 months renewable once) (either parent)	Unpaid	***
Burundi	12 weeks	100%	Mixed (50% social insurance, 50% employer)	15 days	50%	Employer liability	No parental leave	***	***
Cameroon	14 weeks	100%	Social security (social insurance)	10 days	100%	Employer liability	No parental leave	***	***
Cape Verde	9 weeks	90%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Central African Republic	14 weeks	50%	Social security (social insurance)	10 days	100%	Employer liability	No parental leave	***	***
Chad	14 weeks	100%	Social security (social insurance)	10 days	100%	Employer liability	Up to 52 weeks (6 months renewable once) (either parent)	Unpaid	***
Comoros	14 weeks	100%	Employer liability	10 days	100%	Employer liability	No parental leave	***	***

Congo	15 weeks	100%		Mixed (50% social insurance; 50% employer,')	10 days	100%	Employer liability	No parental leave	***	***
Côte d'Ivoire	14 weeks	100%		Social security (social insurance)	10 days	100%	Employer liability	No parental leave	***	***
Democratic Republic of Congo	14 weeks	66.7% (two-thirds)		Employer liability	2 working days	100%	Employer liability	No parental leave	***	***
Djibouti	14 weeks	100%		Mixed (50% social insurance; 50% employer,')	3 days	100%	Employer liability	No parental leave	***	***
Egypt	13 weeks	100%		Mixed (75% social insurance; 25% employer,')	No paternity leave	***	***	104 weeks (only mothers)	Unpaid	***
Equatorial Guinea	12 weeks	75%		Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Eritrea	9 weeks	Paid (amount unidentified)		Employer liability	No paternity leave	***	***	No parental leave	***	***
Ethiopia	13 weeks	100%		Employer liability	5 days	Unpaid	***	No parental leave	***	***
Gabon	14 weeks	100%		Social security (social insurance)	10 days	100%	Employer liability	No parental leave	***	***
Gambia	12 weeks	100%		Employer liability	No paternity leave	***	***	No parental leave	***	***
Ghana	12 weeks	100%		Employer liability	No paternity leave	***	***	No parental leave	***	***
Guinea	14 weeks	100%		Mixed (50% social insurance; 50% employer,')	No paternity leave	***	***	38 weeks (only mothers)	Unpaid	***
Guinea-Bissau	9 weeks	100%		Mixed	No paternity leave	***	***	No parental leave	***	***
Kenya	13 weeks	100%		Employer liability	14 days	100%	Employer liability	No parental leave	***	***
Lesotho	12 weeks	100%		Employer liability	No paternity leave	***	***	No parental leave	***	***

Libya	14 weeks	50% (100% for self-employed women for 13 weeks)	Mixed (employer liability or social insurance for self-employed women)	3 days	***	***	No parental leave	***	***
Madagascar	14 weeks	100%	Mixed (50% social insurance; 50% employer)	10 days	100%	Employer liability	No parental leave	***	***
Malawi	8 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Mali	14 weeks	100%	Social security (social insurance)	3 days	100%	Social security (employer reimbursed by the National Social Security Institute)	No parental leave	***	***
Mauritania	14 weeks	100%	Social security (social insurance)	10 days	100%	Employer liability	No parental leave	***	***
Mauritius	12 weeks	100%	Employer liability	5 working days	100%	Employer liability	No parental leave	***	***
Morocco	14 weeks	100%	Social security (social insurance)	3 days	100%	Social security (employer reimbursed by the National Social Security Fund)	52 weeks (only mothers)	Unpaid	***
Mozambique	9 weeks	100%	Social security (social insurance)	1 day (every two years)	100%	Employer liability	No parental leave	***	***
Namibia	12 weeks	100% up to a ceiling	Social security (social insurance topped up by employer)	No paternity leave	***	***	No parental leave	***	***
Niger	14 weeks	100%	Mixed (50% social insurance; 50% employer)	No paternity leave	***	***	No parental leave	***	***
Nigeria	12 weeks	50%	Employer liability	No paternity leave	***	***	No parental leave	***	***

Rwanda	12 weeks	100% first 6 weeks; 20% remainder	Employer liability	4 working days	100%	Employer liability	No parental leave	***	***
Sao Tome and Principe	9 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Senegal	14 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Seychelles	14 weeks	Fiat rate monthly benefit for 12 weeks	Social security (social insurance)	4 days	100%	Employer liability	No parental leave	***	***
Sierra Leone	12 weeks	100%	Employer liability	***	***	***	***	***	***
Somalia	14 weeks	50%	Employer liability	No paternity leave	***	***	No parental leave	***	***
South Africa	17 weeks	60%	Social security (social insurance)	3 days	100%	Employer liability	No parental leave	***	***
Sudan	8 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Swaziland	12 weeks	100% for 2 weeks	Employer liability	No paternity leave	***	***	No parental leave	***	***
Tanzania, United Republic of	12 weeks	100%	Social security (social insurance)	3 days (on a 36 month cycle)	100%	Employer liability	No parental leave	***	***
Togo	14 weeks	100%	Mixed (50% social insurance; 50% employer)	10 days	100%	Employer liability	No parental leave	***	***
Tunisia	4 weeks	66.70%	Social security (social insurance)	1 day	100%	Social security (employer reimbursed by the National Social Security Fund)	No parental leave	***	***
Uganda	10 weeks	100%	Employer liability	4 working days	100%	Employer liability	No parental leave	***	***
Zambia	12 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***

Zimbabwe	14 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
ASIA									
Afghanistan	13 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Bangladesh	16 weeks	100%	Employer liability	10 days	100%	Employer liability	No parental leave	***	***
Brunei Darussalam	9 weeks	100% for 8 weeks	Employer liability	No paternity leave	***	***	No parental leave	***	***
Cambodia	13 weeks	50%	Employer liability	10 days	100%	Employer liability	No parental leave	***	***
China	14 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Fiji	12 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Hong Kong (China)	10 weeks	80%	Mixed (employer liability and public funds)	***	***	***	***	***	***
India	12 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Indonesia	13 weeks	100%	Employer liability	2 days	100%	Employer liability	No parental leave	***	***
Iran, Islamic Republic of	13 weeks; 17 weeks if breastfeeding	66.7% for 12 weeks	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Kiribati	12 weeks	25%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Korea, Republic of	13 weeks	100%	Mixed (two-thirds employer; one-third social insurance)	3 days	Unpaid	***	52 weeks (either parent)	40%	Social security (social insurance)
Lao People's Democratic Republic	13 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Malaysia	9 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***

Mongolia	17 weeks	70%	Social security (social insurance)	No paternity leave	***	***	156 weeks (either parent)	***	***
Myanmar	12 weeks	66.70%	Social security (social insurance)	6 days	100%	Employer liability	No parental leave	***	***
Nepal	7 weeks	100%	Employer liability	No paternity leave	***	***	4 weeks (any permanent worker/employee)	Unpaid	***
Pakistan	12 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Papua New Guinea	As necessary for hospitalization before confinement and 6 weeks after	Unpaid	***	No paternity leave	***	***	No parental leave	***	***
Philippines	9 weeks	100%	Social security (social insurance)	7 days	100%	Employer liability	No parental leave	***	***
Singapore	16 weeks	100% for first and second child	Mixed (8 weeks employer and 8 weeks public funds)	7 days	100% up to a ceiling	Social security (state)	No parental leave	***	***
Soloman Islands	12 weeks	25%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Sri Lanka	12 weeks for first and second child	6/7 or 100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Thailand	13 weeks	100% for first 45 days (employer); 50% for the last 45 days (social insurance)	Mixed (two-thirds employer; one-third social insurance)	No paternity leave	***	***	No parental leave	***	***
Vanuatu	12 weeks	66.70%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Viet Nam	26 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***

DEVELOPED ECONOMIES

Andorra	16 weeks	100%	Social security (social insurance)	***	***	***	***	***	***
	52 weeks (parental leave)	18 weeks at the federal minimum wage	Social security (public funds - federal government)		Federal minimum wage	Social security (state)	52 weeks, 18 paid (either parent)	Federal minimum wage	Social security (federal government)
Australia				14 days	***	***	104 weeks (either parent)	Flat rate benefit	Social security
Austria	16 weeks	100%	Social security (social insurance)	No paternity leave	***	***			
		82% for the first 30 days; 75% for the remainder (up to a ceiling)			100% for first 3 days, 82% remaining 7 days	Mixed: employer liability (first 3 days), social security (remaining 7 days)			
Belgium	15 weeks		Social security (social insurance)	10 working days			17 weeks (each parent)	Flat rate benefit	Social security (social insurance)
							26 weeks (182 days) (either parent)		Social security (state public insurance)
Bulgaria	32 weeks	90%	Social security (social insurance)	15 days	90%	Social security (state public insurance)	37 weeks, 35 paid (either parent)	90%	Social security (social insurance)
	17 weeks (federal)	55% for 15 weeks up to a ceiling	Social security (social insurance)	No paternity leave	***	***		55%	Social security (social insurance)
Canada									
Channel Islands, Guernsey	18 weeks	Flat rate benefit	Social security (social insurance)	***	***	***	***	***	***
Channel Islands, Jersey	18 weeks	Flat rate benefit	Social security (social insurance)	***	***	***	***	***	***
Cyprus	18 weeks	75%	Social security (social insurance)	No paternity leave	***	***	13 weeks (either parent)	Unpaid	***
Czech Republic	28 weeks	70%	Social security (social insurance)	No paternity leave	***	***	156 weeks (either parent)	Flat rate benefit	Social security (social insurance and public funds)
Denmark	18 weeks	100%	Mixed (public funds and employer)	14 consecutive days	100%	Mixed (state and employer)	32 weeks (either parent)	Unpaid	***
Estonia	20 weeks	100%	Social security (social insurance)	10 working days	100%	Social security (state)	36 weeks (either parent)	Unpaid	***

Finland	18 weeks	70%	Social security (social insurance)	54 working days	70% up to a ceiling, plus 40% of an additional amount up to a ceiling, plus 25% of another additional amount	Social security (social insurance)	26 weeks (158 working days) (either parent)	70%	Social security (social insurance)
France	16 weeks	100% up to a ceiling	Social security (social insurance)	11 working days	100% up to a ceiling	Social security (Health Insurance Fund)	156 weeks, 26 paid for the first child (each parent)	Flat rate benefit (per household)	Social security (social insurance)
Germany	14 weeks	100%	Mixed (social insurance for a flat rate benefit and employer liability)	No paternity leave	***	***	156 weeks, 52 paid (either parent)	67%	Social security (public funds)
Greece	17 weeks	100%	Social security (social insurance and public funds)	2 days	100%	Employer liability	17 weeks (each parent) until the child is 6 years	Unpaid	***
Hungary	24 weeks	70%	Social security (social insurance)	5 days	100%	Social security (Health Insurance Fund)	156 weeks (either parent)	70% up to a ceiling for 104 weeks for insured parents; flat rate benefits for non-insured and all parents for the last 52 weeks	Social security (Health Insurance Fund and state)
Iceland	13 weeks	80%	Social security (social insurance)	90 consecutive days	80% up to a ceiling	Social security (social insurance)	13 paid weeks (either parent) + 13 unpaid weeks (each parent)	80% up to a ceiling	Social security (social insurance)
Ireland	42 weeks	80% up to a ceiling for 26 weeks	Social security (social insurance)	No paternity leave	***	***	17 weeks (each parent)	Unpaid	***
Isle of Man	26 weeks	90%	Social security (social insurance and social assistance)	***	***	***	***	***	***
Israel	14 weeks	100% up to a ceiling	Social security (social insurance)	No paternity leave	***	***	52 weeks (each parent)	Unpaid	***

Italy	22 weeks	80%	Social security (social insurance)	1 day	100%	Social security (social insurance)	26 weeks (each parent)	30%	Social security (social insurance)
Japan	14 weeks	66.70%	Social security (social insurance and public funds for 1/8 of the total cost)	No paternity leave	***	***	52 weeks (each parent)	50% up to a ceiling	Social security (social insurance)
Latvia	16 weeks	80%	Social security (social insurance)	10 calendar days	80%	Social security (state social insurance)	78 weeks (each parent)	70%	Social security (social insurance)
Lithuania	18 weeks	100%	Social security (social insurance)	30 consecutive days	100% up to a ceiling	Social security (social insurance)	156 weeks, 52 paid (either parent)	100% until the child is 1 year or 70% until 2 years; last period unpaid	Social security (social insurance)
Luxembourg	16 weeks	100%	Social security (social insurance)	2 days	100%	Employer liability	26 weeks (each parent)	Flat rate benefit	Social security (state)
Malta	18 weeks	100% for 14 weeks	Mixed (employer liability and social insurance)	No paternity leave	***	***	13 weeks (each parent)	Unpaid	***
Monaco	16 weeks	90% up to a ceiling	Social security (social insurance)	***	***	***	***	***	***
Netherlands	16 weeks	100% up to a ceiling	Social security (social insurance)	2 days	100%	Employer liability	26 weeks (each parent) with part-time work	Unpaid	***
New Zealand	14 weeks	100% up to a ceiling	Social security (public funds - State)	14 consecutive days	Unpaid	***	52 weeks (either parent)	Unpaid	***
Norway	35 (or 45) weeks	100% (or 80% for 45 weeks)	Social security (social insurance)	14 consecutive days	Unpaid (though often covered by CBAs or employers)	***	49 or 59 weeks depending on payment level (14 weeks reserved for mothers and 14 weeks for fathers)	49 weeks at 100% or 59 weeks at 80% up to a ceiling	Social security (social insurance)
Poland	26 weeks	100%	Social security (social insurance)	14 consecutive days	100%	Social security (social insurance)	156 weeks after maternity leave, 104 paid (either parent)	60% for 26 weeks and flat rate benefit for 104 weeks	Social security (social insurance and then 26 weeks and then state)

Portugal	17 (or 21) weeks	100% (or 80% for 21 weeks)	Social security (social insurance)	20 days (10 of which are compulsory)	100%	Social security (social insurance)	Initial Parental Leave: 17 or 21 weeks. Additional Parental Leave: 13 weeks (each parent)	Initial Parental Leave: 100% (or 80% for 21 weeks); Additional Parental Leave: 25%	Social security (social insurance)
							Either parent. Option I: until the child is 12 months old and unpaid parental leave until the child is 24 months, if the parent decides not to return to work. Option II: until the child is 2 years old	Option I: 75% up to ceiling and incentive pay if the parent returns to work. Option II: 75% with a different ceiling and no incentive pay	Social security (state)
Romania	18 weeks	85%	Social security (State Health Insurance)	5 working days (10 days if worker attended infant care courses)	100%	Employer liability			Social security (state)
San Marino	22 weeks	100%	Social security (social insurance)	***	***	***	***	***	***
Slovakia	34 weeks	65%	Social security (social insurance)	No paternity leave	***	***	156 weeks (either parent)	Flat rate benefits	Social security (state)
Slovenia	15 weeks	100%	Social security (social insurance)	90 consecutive days	100% up to a ceiling (first 15 days); flat rate benefit (remaining 75 days)	Social security (social insurance) 15 days and state 75 days; only limited benefits	37 weeks (either parent)	90% up to a ceiling	Social security (social insurance)
	16 weeks	100%	Social security (social insurance)	15 calendar days	100% up to a ceiling	Social security (social insurance)	156 weeks (each parent)	Unpaid	***

Sweden	14 weeks	80%	Social security (social insurance)	10 days	80% up to a ceiling	Social security (social insurance)	80 weeks (480 days to be shared by parents)	80% up to a ceiling for 65 weeks (390 days); flat rate benefits for 15 weeks (90 days)	Social security (social insurance)
Switzerland	14 weeks	80% up to a ceiling	Social security and mandatory private insurance (50% employer; 50% employee)	No paternity leave	***	***	No parental leave	***	***
United Kingdom	52 weeks	6 weeks paid at 90%; lower of 90%/flat rate for weeks 7-39; weeks 40-52 unpaid	Mixed (employers reimbursed up to 92% by public funds)	14 consecutive days	Flat rate benefit or 90% of the average weekly earnings, whichever is less	Mixed (employers pay the benefit but are entitled to recover 92% of the statutory paternity pay from social insurance)	13 weeks (each parent)	Unpaid	***
United States (federal)	12 weeks	Unpaid	No federal program	No paternity leave	***	***	12 weeks (each parent)	Unpaid	***
EASTERN EUROPE AND CENTRAL ASIA									
Albania	52 weeks	80% prior to birth up to 150 days after; 50% for remainder	Social security (social insurance)	No paternity leave	***	***	12 days (either parent)	100%	Employer liability
Armenia	20 weeks	100%	Social security (social insurance)	No paternity leave	***	***	156 weeks (either parent or actual caregiver)	Unpaid	**
Azerbaijan	18 weeks	100%	Social security (social insurance)	14 calendar days	Unpaid	***	156 weeks (either parent or actual caregiver)	Flat rate benefit	***
Belarus	18 weeks	100%	Social security (social insurance)	No paternity leave	***	***	156 weeks (either parent or actual caregiver)	80% of the minimum subsistence wage	Social security (social insurance)

Bosnia and Herzegovina	52 weeks	50% to 100%	Social security (social insurance and public funds)	7 working days (federal)	100%		Employer liability	Right to parental leave stems from CBAs, 156 weeks (either parent)	Unpaid	***
Croatia	58 weeks	100% until 6 months after birth, then a flat-rate benefit	Social security (public funds - State)	7 working days	100%		Employer liability	104 weeks (either parent)	Unpaid	***
Georgia	18 weeks	100%	Social security (social insurance)	***	***		***	50 weeks (either parent)	***	***
Kazakhstan	18 weeks	100%	Social security (social insurance)	5 days	Unpaid		***	156 weeks (either parent)	Unpaid	***
Kyrgyzstan	18 weeks	7 times the minimum wage level	Social security (social insurance)	***	***		***	***	***	***
Moldova, Republic of	18 weeks	100%	Social security (social insurance)	No paternity leave	***		***	156 weeks (either parent or actual caregiver)	Partially paid	Social security (social insurance)
Montenegro	52 weeks	100%	Social security (social insurance)	***	***		***	***	***	***
Russian Federation	20 weeks	100% up to a ceiling	Social security (social insurance)	No paternity leave	***		***	156 weeks, 78 paid (either parent or actual caregiver)	40% up to a ceiling	Social security (social insurance)
Serbia	20 weeks	100%	Social security (social insurance)	7 working days	100%		Employer liability	52 weeks (only mothers)	100% (first 26 weeks), 60% (from week 27 to week 39), 30% (from week 40 to week 52)	Social security (social insurance)
Tajikistan	20 weeks	100%	Social security (social insurance)	No paternity leave	***		***	156 weeks, 78 paid (either parent or actual caregiver)	Flat rate benefit	Social security (social insurance)
The former Yugoslav Republic of Macedonia	39 weeks	100%	Social security (social insurance)	***	***		***	156 weeks (either parent)	***	***

Turkey	16 weeks	66.70%	Social security (social insurance)	No paternity leave	***	***	***	26 weeks (only mothers)	Unpaid	***
Turkmenistan	16 weeks	100%	Social security (social insurance)	***	***	***	***	***	***	***
Ukraine	18 weeks	100%	Social security (social insurance)	No paternity leave	***	***	***	156 weeks, 78 paid (either parent or actual caregiver)	Partially paid for 78 weeks; childcare allowance for remainder	Social security (social insurance)
Uzbekistan	18 weeks	100%	Social security (social insurance)	No paternity leave	***	***	***	156 weeks, 104 paid (either parent or actual caregiver)	20% of minimum wage	Social security (social insurance)
LATIN AMERICA AND THE CARIBBEAN										
Antigua and Barbuda	13 weeks	100% for 6 weeks; 60% for 7 weeks	Mixed (60% social insurance; 40% employer for first 6 weeks)	No paternity leave	***	***	***	No parental leave	***	***
Argentina	13 weeks	100%	Social security (social insurance)	2 days	100%	Employer liability	***	No parental leave	***	***
Bahamas	12 weeks	100%	Mixed (two-thirds social insurance for 13 weeks; one-third employer for 12 weeks)	7 days	Unpaid	***	***	No parental leave	***	***
Barbados	12 weeks	100%	Social security (social insurance)	No paternity leave	***	***	***	No parental leave	***	***
Belize	14 weeks	100%	Social security (social insurance)	No paternity leave	***	***	***	No parental leave	***	***
Bolivia, Plurinational State of	13 weeks	95%	Social security (social insurance)	No paternity leave	***	***	***	No parental leave	***	***
Brazil	17 weeks	100%	Social security (social insurance)	5 consecutive days	100%	Employer liability	***	No parental leave	***	***
British Virgin Islands	13 weeks	66.70%	Social security (social insurance)	***	***	***	***	***	***	***

Chile	18 weeks	100% up to a ceiling	Social security (social insurance)	5 days	100%		Employer liability (social insurance)	12 weeks (6 weeks reserved for mothers)	100% up to a ceiling	Social security (social insurance)
Colombia	14 weeks	100%	Social security (social insurance)	8 days	100%		Social security (social insurance)	No parental leave	***	***
Costa Rica	17 weeks	100%	Mixed (50% social insurance; 50% employer)	No paternity leave	***		***	No parental leave	***	***
Cuba	18 weeks	100%	Social security (social insurance)	No paternity leave	***		***	39 weeks (either parent)	60%	Social security (social insurance)
Dominica	12 weeks	60%	Social security (social insurance)	No paternity leave	***		***	No parental leave	***	***
Dominican Republic	12 weeks	100%	Mixed (50% social insurance; 50% employer)	2 days	100%		Employer liability	No parental leave	***	***
Ecuador	12 weeks	100%	Mixed (75% social insurance; 25% employer)	10 days	100%		Employer liability	No parental leave	***	***
El Salvador	12 weeks	75%	Social security (social insurance)	3 days	100%		Employer liability	No parental leave	***	***
Grenada	13 weeks	100% for 2 months; 65% for last month	Mixed (65% social insurance for 3 months; 35% employer for 2 months)	No paternity leave	***		***	No parental leave	***	***
Guatemala	12 weeks	100%	Mixed (two-thirds social insurance; one-third employer)	2 days	100%		Employer liability	No parental leave	***	***
Guyana	13 weeks	70%	Social security (social insurance)	No paternity leave	***		***	No parental leave	***	***
Haiti	12 weeks	100% for 6 weeks	Employer liability	No paternity leave	***		***	No parental leave	***	***
Honduras	12 weeks	100% for 10 weeks	Mixed (two-thirds social insurance; one-third employer)	No paternity leave	***		***	No parental leave	***	***

Jamaica	12 weeks	100% for 8 weeks	Employer liability	No paternity leave	***	***	No parental leave	***	***
Mexico	12 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Nicaragua	12 weeks	100%	Mixed (60% social insurance; 40% employer)	No paternity leave	***	***	No parental leave	***	***
Panama	14 weeks	100%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Paraguay	12 weeks	50% for 9 weeks	Social security (social insurance)	3 days	100%	Employer liability	No parental leave	***	***
Peru	13 weeks	100%	Social security (social insurance)	4 days	100%	Employer liability	No parental leave	***	***
Puerto Rico	8 weeks	100%	Employer liability	***	***	***	***	***	***
Saint Kitts and Nevis	13 weeks	65%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Saint Lucia	13 weeks	65%	Social security (social insurance)	No paternity leave	***	***	No parental leave	***	***
Saint Vincent and the Grenadines	13 weeks	65%	Social security (social insurance)	***	***	***	***	***	***
Trinidad and Tobago	13 weeks	100%	Mixed (two-thirds employer; one-third social insurance)	No paternity leave	***	***	No parental leave	***	***
Uruguay	12 weeks	100%	Social security (social insurance)	3 days	100%	Employer liability	No parental leave	***	***
Venezuela, Bolivarian Republic of	26 weeks	100%	Social security (social insurance)	14 consecutive days	100%	Social security (social insurance)	No parental leave	***	***
MIDDLE EAST									
Bahrain	9 weeks	100% for 45 days	Employer liability	No paternity leave	***	***	26 weeks (only mothers)	Unpaid	***

Iraq	9 weeks	100%	Employer liability	No paternity leave	***	***	52 weeks (only mothers)	Unpaid	***
Jordan	10 weeks	100%	Social security (social insurance)	No paternity leave	***	***	52 weeks (only mothers)	Unpaid	***
Kuwait	10 weeks	100%	Employer liability	No paternity leave	***	***	17 weeks (only mothers)	Unpaid	***
Lebanon	7 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Occupied Palestinian Territory	10 weeks	100%	Employer liability	***	***	***	***	***	***
Oman	7 weeks	100%	Employer liability	***	***	***	***	***	***
Qatar	7 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Saudi Arabia	10 weeks	50-100%	Employer liability	1 day	100%	Employer liability	No parental leave	***	***
Syrian Arab Republic	17 weeks	100%	Employer liability	6 days	Unpaid	***	52 weeks (only mothers)	Unpaid	***
United Arab Emirates	6 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***
Yemen	9 weeks	100%	Employer liability	No paternity leave	***	***	No parental leave	***	***